

1 MANATT, PHELPS & PHILLIPS, LLP
2 GREGORY N. PIMSTONE (Bar No. 150203)
3 Email: gpimstone@manatt.com
4 SARAH E. GETTINGS (Bar No. 260436)
5 Email: sgettings@manatt.com
6 11355 West Olympic Boulevard
7 Los Angeles, CA 90064-1614
8 Telephone: (310) 312-4000
9 Facsimile: (310) 312-4224

6 MANATT, PHELPS & PHILLIPS, LLP
7 JOSEPH E. LASKA (Bar No. 221055)
8 Email: jlaska@manatt.com
9 One Embarcadero Center, 30th Floor
San Francisco, CA 94111
Telephone: (415) 291-7400
Facsimile: (415) 291-7474

10 Attorneys for Defendant
11 CALIFORNIA PHYSICIANS' SERVICE dba
12 BLUE SHIELD OF CALIFORNIA

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

16 DAVID LIEBERMAN, individually
17 and on behalf of all others similarly
situuated,

18 Plaintiffs,

19 vs.

20 REGENTS OF THE UNIVERSITY OF
21 CALIFORNIA; BLUE SHIELD OF
22 CALIFORNIA; and DOES 1 to 50,

23 Defendants.

Case No. 3:18-cv-3282

**DEFENDANT BLUE SHIELD OF
CALIFORNIA'S NOTICE OF
REMOVAL OF CIVIL ACTION
TO FEDERAL COURT**

Filed concurrently with:

- 1) Civil Case Cover Sheet
- 2) Certificate of Service to Adverse Party of Notice of Removal (LR 5-5)
- 3) Corporate Disclosure Statement (FRCP 7.1) and Certification of Interested Entities or Persons (LR 3-15)

TO THE CLERK OF THE UNITED STATES DISTRICT COURT:

PLEASE TAKE NOTICE that Defendant California Physicians' Service dba Blue Shield of California ("Blue Shield"), by and through its counsel, gives notice that it removes this putative class action to the United States District Court for the Northern District of California and states the following grounds for removal:

I. GROUNDS FOR REMOVAL

1. This is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1331 and which may be removed by Blue Shield under 28 U.S.C. § 1441(b), because it arises under the Fifth and Fourteenth Amendments of the United States Constitution.

II. SERVICE OF COMPLAINT AND FIRST AMENDED COMPLAINT

2. On March 13, 2018, Plaintiff filed a putative class action titled *Lieberman v. Regents of the Univ. of California et. al.*, bearing case number CGC-18-564930 in the Superior Court of the State of California for the County of San Francisco (the “State Court Action”). The putative class action was filed against two defendants, Blue Shield and the Regents of the University of California (“UC Regents”) (collectively, “Defendants”).

3. Plaintiff served Defendants with a copy of the original Complaint and Summons on March 21, 2018. Attached as Exhibit A is a true and correct copy of the Complaint and Summons. Attached as Exhibit B is a true and correct copy of the Proofs of Service of Summons.

4. The original Complaint did not include any allegations pertaining to the United States Constitution.

5. The parties met and conferred regarding Defendants' pleading challenges to the original Complaint. Plaintiff agreed to extend Defendants' deadline to respond to the Complaint to May 18, 2018. Plaintiff then indicated he intended to file an amended complaint.

1 6. Because Plaintiff had not designated the case complex upon filing the
 2 Complaint, Blue Shield filed a Civil Cover Sheet counter-designating the case
 3 complex on May 1, 2018. UC Regents also filed the same. Blue Shield filed an
 4 Application for Approval of Complex Litigation Designation on May 15, 2018 and,
 5 on May 30, 2018, the Court issued an Order Granting Complex Designation.
 6 Attached as Exhibit C is a true and correct copy of these filings and the order.

7 7. Plaintiff amended the Complaint. On May 4, 2018, Plaintiff served
 8 Defendants with a copy of the First Amended Complaint. Attached as Exhibit D is
 9 a true and correct copy of the First Amended Complaint.

10 8. In the First Amended Complaint, Plaintiff added allegations in which
 11 he asserted that Defendants violated the due process and equal protection clauses of
 12 the United States Constitution. As set forth below, Plaintiff's claims in the amended
 13 complaint now hinge on these alleged constitutional violations.

14 9. Blue Shield's notice of removal is timely. 28 U.S.C. § 1446(b). Not
 15 more than thirty (30) days have passed since service of the First Amended
 16 Complaint on Blue Shield.

17 10. All Defendants consent to removal.

18 **III. FACTS ESTABLISHING FEDERAL QUESTION JURISDICTION**

19 11. Removal is proper because “[t]he district courts shall have original
 20 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the
 21 United States” (28 U.S.C. § 1331), and the causes of action in Plaintiff's First
 22 Amended Complaint arise under the Fifth and Fourteenth Amendments of the
 23 United States Constitution.

24 **A. In the First Amended Complaint, Plaintiff seeks relief for 25 Defendants' alleged constitutional violations.**

26 12. Plaintiff David Lieberman is a professor at UC Berkeley Law School.
 27 (FAC ¶ 1.) He alleges that, as an employee, he was entitled to health care coverage
 28 as a group employee benefit. (*Id.*) That health coverage was “a self-funded plan

1 paid through monthly contributions by employees and the Regents.” (*Id.*) Plaintiff
 2 was enrolled in that UC Regents health plan in 2016, and Blue Shield was the
 3 claims administrator for the plan. (*Id.* ¶ 13.)

4 13. On May 2, 2016, Plaintiff sustained serious injuries in connection with
 5 a motor vehicle accident. (FAC ¶ 2.) Plaintiff’s UC Regents plan paid his medical
 6 expenses, which were “in excess of \$500,000.” (*Id.*) Plaintiff alleges the individual
 7 who caused his accident had \$15,000 of liability coverage, but Plaintiff had
 8 \$500,000 of uninsured and underinsured coverage (“UM/UIM coverage”). (*Id.* ¶ 3.)

9 14. Plaintiff then alleges that his UC Regents health plan states that the
 10 plan has the right to recover medical expenses that the plan paid for employees
 11 from any third party recovery obtained by the injured employee related to those
 12 medical expenses.¹ (FAC ¶ 4.) As set forth below, Plaintiff alleges that this
 13 reimbursement provision in the UC Regents health plan is unlawful.

14 15. Plaintiff alleges that Blue Shield, the claims administrator under the
 15 plan, contracts with a collection agency, Rawlings and Company, to pursue
 16 reimbursement from employees for UM/UIM recoveries. (FAC ¶ 17.) Plaintiff
 17 further alleges that “Rawlings has sent multiple demands for reimbursement” to
 18 him and that his “personal injury attorney advised Rawlings in writing that any
 19 such claim was unlawful.” (*Id.* ¶ 18.) Rawlings “responded with a letter dated
 20 October 16, 2017, rejecting plaintiff’s position and insisting on a right to plaintiff’s
 21 UM/UIM coverage” and “[s]ince that date, Rawlings has continued to pursue

22 1 Specifically, the UC Regents health plan states that “[i]f a Member’s injury or illness was, in
 23 any way, caused by a third party who may be legally liable or responsible for the injury or illness,
 24 no benefits will be payable or paid under the Plan unless the Member agrees in writing, in a form
 25 satisfactory to the Plan” to “reimburse the Plan for Benefits paid by the Plan from any Recovery
 26 (defined below) when the Recovery is obtained from or on behalf of the third party or the insurer
 27 of the third party, or from the Member’s own uninsured or underinsured motorist coverage.”
 28 (FAC ¶ 4 [referencing Exhibit 1 as “attached hereto” and page 42 thereof]; Compl., Ex. 1.) The
 plan defines “Recovery” to include “any amount awarded to or received by way of . . . any third
 party or third party insurer, or from your uninsured or underinsured motorist coverage, related to
 the illness or injury.” (*Id.*) The plan then states: “The Member shall pay to the Plan from the
 Recovery an amount equal to the Benefits actually paid by the Plan in connection with the illness
 or injury.” (*Id.*)

1 reimbursement from plaintiff Lieberman's UM/UIM policy." (*Id.*) Plaintiff does not
 2 allege that Rawlings collected any amounts from his UM/UIM policy. (*See id.*)

3 16. Plaintiff alleges that UC Regents has 185,000 employees and he
 4 asserts putative class claims on behalf of two subclasses of employees. (FAC ¶¶ 19-
 5 20.) Subclass A is "[a]ll present and previous employees of REGENTS who are
 6 currently facing DEFENDANTS' claims for reimbursement from their own
 7 UM/IUM claims but have not paid defendants from said coverage, and REGENTS
 8 employees who face such claims in the future." (*Id.* ¶ 20.) Subclass B is "[a]ll
 9 REGENTS employees who have paid reimbursement claims to DEFENDANTS or
 10 their agents from their UM/UIM coverage since March 1, 2014." (*Id.*)

11 17. The basis of Plaintiff's complaint is that the reimbursement provision
 12 in the UC Regents health plan and the actions by Rawlings, Blue Shield's alleged
 13 agent, requesting reimbursement under the plan are unlawful for three reasons:

14 18. First, Plaintiff alleges that the plan and Rawlings' actions violate
 15 California Insurance Code § 11580.2(c)(4), which states in relevant part "[t]he
 16 insurance coverage provided for in this section [UM/UIM] does not apply either as
 17 primary or as excess coverage . . . [i]n any instance where it would inure . . . directly
 18 to the benefit of the United States, or any state or any political subdivision thereof."
 19 (FAC ¶ 5.) Plaintiff contends that UC Regents is a "political subdivision." (*See id.*)

20 19. Second, Plaintiff alleges that the plan and Rawlings' actions violate the
 21 due process clauses of the Fifth and Fourteenth Amendments of the United States
 22 Constitution. (FAC ¶ 9.) Plaintiff asserts that "DEFENDANTS' seizure of
 23 plaintiff's right to his individual UIM coverage benefits through the unilateral
 24 assertion of a lien claim in its plan document constitutes a seizure of private
 25 property by the State without any due process of law. There is no provision in
 26 DEFENDANTS' plan for any hearing or other judicial oversight before such
 27 seizure is effected through assertion of the lien claim." (*Id.*)

1 20. Third, Plaintiff alleges that that the plan and Rawlings' actions violate
 2 the equal protection clause of the Fourteenth Amendment of the United States
 3 Constitution. (FAC ¶ 9.) Plaintiff asserts that "DEFENDANTS' reimbursement
 4 provision (Exhibit 1) also purports to provide that there is a 'waiver of any defense
 5 to full reimbursement of the Plan from the recovery.' Said seizure also constitutes a
 6 violation of equal protection of the laws of the State in that similarly situated
 7 persons are treated substantially differently depending on which State laws apply,
 8 as noted above." (*Id.*)

9 **B. All of Plaintiff's causes of action hinge on a finding that
 10 Defendants violated the United States Constitution.**

11 21. Plaintiff asserts four causes of action in the First Amended Complaint:
 12 (1) declaratory relief, (2) preliminary and permanent injunctive relief, (3) unjust
 13 enrichment/restitution, and (4) violation of California's Unfair Competition Law
 14 ("UCL"), Business & Professions Code § 17200.

15 22. In Count 1, Plaintiff seeks a declaration that the reimbursement
 16 provision in the UC Regents health plan and Rawlings' requests for reimbursement
 17 violate California Insurance Code § 11580.2(c)(4), the due process clauses of the
 18 United States Constitution, and the equal protection clause of the United States
 19 Constitution. (FAC ¶¶ 30-33; Prayer for Relief ¶¶ 1-2)

20 23. In Count 2, Plaintiff seeks preliminary and permanent injunctive relief
 21 based on the same three legal theories. (FAC ¶¶ 34-38.)

22 24. In Count 3, Plaintiff asserts that the Defendants were unjustly enriched
 23 and seeks restitution based on the same three legal theories. (FAC ¶¶ 39-43.)

24 25. In Count 4, which is asserted only against Blue Shield, Plaintiff asserts
 25 that Rawlings' actions violate the "unlawful" prong of the UCL based on the same
 26 three legal theories. (FAC ¶¶ 44-53.)

27 26. In his class allegations, Plaintiff asserts that a legal question common
 28 to the class is "[w]hether the Defendants' plan provision allowing a lien seizure of

1 employees' UIM coverage without the benefit of any hearing or judicial oversight
 2 is a violation of due process and equal protection of the law." (FAC ¶ 27.)

3 **C. Removal is appropriate even though these federal questions are
 4 embedded within state law claims.**

5 27. Removal is appropriate, even though the federal questions are
 6 embedded within state law claims. The Ninth Circuit has consistently upheld
 7 removal where, as here, a plaintiff's state law claims are predicated upon alleged
 8 violations of federal law. *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831
 9 (9th Cir.), *as amended on denial of reh 'g*, 387 F.3d 966 (9th Cir. 2004) (affirming
 10 removal of UCL action where "unlawful" claim grounded upon violation of a
 11 federal regulation); *Sparta Surgical Corp. v. National Assoc. of Sec. Dealers, Inc.*,
 12 159 F.3d 1209, 1212-13 (9th Cir. 1998) (affirming removal where state law claims
 13 predicated on regulations issued pursuant to federal law); *Brennan v. Southwest
 14 Airlines Co.*, 134 F.3d 1405, 1409 (9th Cir. 1998) (affirming removal of UCL claim
 15 because it was inherently federal as it sought refund of tax governed by federal
 16 law); *see also National Credit Reporting Ass 'n, Inc. v. Experian Info. Sols., Inc.*,
 17 No. C04-01661 WHA, 2004 WL 1888769, at *3 (N.D. Cal. July 21, 2004) ("Even
 18 if Section 17200 provides for a separate remedy for a violation of the borrowed
 19 federal law, the 'unlawful' prong of Section 17200 necessarily requires a
 20 determination that the borrowed federal law was violated. When the borrowed law
 21 is a federal law, then the claim for unlawful business practices rests on resolution of
 22 the federal law. Such an unlawful claim may be removed because the federal law is
 23 essential to the plaintiff's claim.") (citations omitted).

24 28. Here, as in the cases cited above, Plaintiff's state law claims hinge on a
 25 finding by the Court that Defendants violated federal law. Accordingly, the case is
 26 removable under 28 U.S.C. § 1441(b).

27

28

1 **D. The Court should exercise supplemental jurisdiction over**
 2 **Plaintiff's state law theory.**

3 29. The Court may exercise supplemental jurisdiction over "all other
 4 claims that are so related to claims in the action . . . that they form part of the same
 5 case or controversy . . ." 28 U.S.C. § 1337(a).

6 30. As set forth above, Plaintiff's claims are based on three legal
 7 theories—that the reimbursement provision and Rawlings' requests for
 8 reimbursement are unlawful under the Insurance Code § 11580.2(c)(4), the due
 9 process clauses of the United States Constitution, and the equal protection clause of
 10 the United States Constitution.

11 30. The Court should exercise supplemental jurisdiction over Plaintiff's
 12 state law theory under California Insurance Code § 11580.2(c)(4), because it is part
 13 of the same case or controversy. The theory turns on the same set of facts as
 14 Plaintiff's federal constitutional theories. Further, Plaintiff seeks the same relief.
 15 Under all three legal theories, Plaintiff asks this Court to find that the
 16 reimbursement provision in the UC Regents health plan is unlawful and cannot be
 17 enforced with respect to his UM/UIM recovery.

18 **IV. INTRADISTRICT ASSIGNMENT**

19 31. Assignment to the San Francisco Division of the United States Court
 20 for the Northern District of California is proper under 28 U.S.C. § 1441(a) and
 21 Civil Local Rule 3-5(b) because the State Court Action was filed and is pending in
 22 the County of San Francisco.

23 **V. SERVICE OF NOTICE OF REMOVAL**

24 32. Written notice of this removal will be filed with the Clerk for the
 25 Superior Court of California in the County of San Francisco and served on
 26 Plaintiff's counsel.

1 **VI. CONCLUSION**2 33. Blue Shield requests that the Court exercise removal and supplemental
3 removal jurisdiction over this action and proceed as though it originally was filed in
4 this Court and that the Court grant Blue Shield any other relief to which is Blue
5 Shield entitled.

6 Dated: June 1, 2018

7 MANATT, PHELPS & PHILLIPS, LLP

8 By: /s/ Joseph E. Laska

9 Joseph E. Laska

10 Attorneys for Defendant

11 CALIFORNIA PHYSICIANS' SERVICE dba
12 BLUE SHIELD OF CALIFORNIA

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EXHIBIT A



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Mar-12-2018 11:42 am

Case Number: CGC-18-564930

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COMPLAINT

DAVID LIBERMAN VS. REGENTS OF THE UNIVERSITY OF CALIFORNIA ET AL

001C06249849

Instructions:

Please place this sheet on top of the document to be scanned.

CM-010

| | | |
|--|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): MICHAEL D. PADILLA, SBN 67060 O'MARA & PADILLA 320 Encinitas Blvd., Suite A Encinitas, CA 92024 TELEPHONE NO.: 858-481-5454 ATTORNEY FOR (Name): DAVID LIEBERMAN | | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: CIVIL CENTER COURTHOUSE | | FILED San Francisco County Superior Court MAR 12 2018 CLERK OF THE COURT BY: <i>[Signature]</i> Deputy Clerk |
| CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) | | Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) |
| | | CASE NUMBER: CGC-18-564930 JUDGE: DEPT: |

Items 1-6 below must be completed (see instructions on page 2).

| | | |
|---|--|---|
| 1. Check one box below for the case type that best describes this case: | Contract | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) |
| Auto Tort | <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) | <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) |
| Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort | <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) | <input type="checkbox"/> Insurance coverage (18) <input checked="" type="checkbox"/> Other contract (37) |
| Non-PI/PD/WD (Other) Tort | <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) | <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) |
| Employment | <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15) | Unlawful Detainer |
| | | <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) |
| | | Judicial Review |
| | | <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) |
| | | Enforcement of Judgment |
| | | <input type="checkbox"/> Enforcement of judgment (20) |
| | | Miscellaneous Civil Complaint |
| | | <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) |
| | | Miscellaneous Civil Petition |
| | | <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. ~~declaratory or injunctive relief~~ c. punitive

4. Number of causes of action (specify):

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 18, 2018

MICHAEL D. PADILLA

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

ORIGINAL

1 MICHAEL PADILLA, Esq., SBN 67060
 2 JEFFREY PADILLA, Esq., 239693
 3 O'MARA & PADILLA
 4 320 Encinitas Blvd., Suite A
 5 Encinitas, CA 92024
 6 Tel: 858-481-5454/Fax: 858-720-9797

FILED
 San Francisco County Superior Court

MAR 12 2018

CLERK OF THE COURT
 BY: *[Signature]* Deputy Clerk

7 DONALD M. DE CAMARA, Esq., SBN 69703
 8 LAW OFFICES OF DONALD M. DE CAMARA
 9 1241 Carlsbad Village Drive, Suite E
 10 Carlsbad, CA 92008
 11 Tel: 760-730-7404/Fax: 760-730-7409

12 THOMAS D. HAKLAR, Esq., SBN 169039
 13 LAW OFFICE OF THOMAS D. HAKLAR
 14 320 Encinitas Blvd., Suite A
 15 Encinitas, CA 92024
 16 Tel: 858-481-5454/Fax: 858-720-9797

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 IN AND FOR THE COUNTY OF SAN FRANCISCO – CIVIL CENTER COURTHOUSE

19 DAVID LIEBERMAN, INDIVIDUALLY AND
 20 ON BEHALF OF ALL OTHERS SIMILARLY
 21 SITUATED,

22 Plaintiffs,
 23 vs. 

24 REGENTS OF THE UNIVERSITY OF
 25 CALIFORNIA; BLUE SHIELD OF
 26 CALIFORNIA, AND DOES 1 TO 50,
 27 INCLUSIVE

Defendants.

Case No. CGC-18-564930

Action Filed:

Judge:

Dept:

CLASS ACTION COMPLAINT

VERIFIED COMPLAINT FOR:

1. Declaratory Relief

**2. Preliminary and Permanent
 Injunctive Relief**

3. Unjust Enrichment/Restitution

**4. Violation of Business and
 Professions Code §17200, et seq.
 (Unlawful and Unfair)**

ORIGINAL

1 BY
 2 FAX
 3

1 Plaintiff DAVID LIEBERMAN by and through his undersigned counsel, alleges,
2 based on personal knowledge as to himself and his own acts and, as to other matters,
3 based on information and belief, as follows:

4

5 **INTRODUCTION**

6 1. At all times mentioned, plaintiff David Lieberman has been employed by the
7 defendant Regents of the University of California (hereinafter "REGENTS") as a
8 professor at UC Berkeley Law School. Employees of the REGENTS are entitled to
9 health care coverage as a group benefit of their employment. This coverage is a self-
10 funded plan paid through monthly contributions by employees and the Regents and
11 plaintiff was enrolled in this health plan in 2016. Since defendant REGENTS is a
12 political subdivision of the State of California, it is a public entity and therefore the
13 REGENTS group health plan is not subject to ERISA.

14 2. On May 2, 2016, plaintiff was involved in a serious motor vehicle accident
15 and suffered severe injuries, requiring hospitalization and extensive treatment. At the
16 time of the accident, plaintiff was covered under the REGENTS health plan, and said
17 health plan paid for plaintiff's medical expenses in excess of \$500,000.

18 3. At the time of the above accident, the tortfeasor who caused the accident
19 injuring plaintiff had only \$15,000 of liability coverage. However, plaintiff had \$500,000
20 of uninsured and underinsured ("UM/UIM") coverage which provides for an additional
21 \$485,000 of coverage to plaintiff.

22 4. The REGENTS group health plan at the time of plaintiff's accident provided
23 for reimbursement rights purporting to allow REGENTS to recover medical expenses its
24 health plan had paid from any "Recovery" made by an injured employee. "Recovery" is

1 defined in the plan to include any amount received from the employee's UM/UIM
2 coverage. The REGENTS health plan's reimbursement provision appears at pages 42-
3 43 of the plan's Benefit Booklet, which pages are attached hereto as Exhibit 1.
4

5 5. In 1972, the California State Legislature modified the UM/UIM statute,
6 Insurance Code §11580.2 and included a new subsection under §11580.2(c)(4),
7 providing that, "The insurance coverage provided for in this section does not apply
8 either as primary or as excess coverage" (4) "In any instance where it would inure
9 directly or indirectly to the benefit of any workers' compensation carrier or to any or to
10 any person qualified as a self-insurer under any workers' compensation law, **or directly**
11 **to the benefit of the United States, or any state or any political subdivision**
12 **thereof.**" (emphasis supplied)

13 6. DEFENDANTS have willfully violated this law by demanding reimbursement
14 rights from Plaintiffs' UM/UIM coverage, despite the fact that the defendant REGENTS
15 is a state public entity and political subdivision of the State of California and therefore
16 prohibited by the above Insurance Code section from directly benefiting from any
17 person's UM/UIM coverage.

18 7. This is a Class Action pursuant to Code of Civil Procedure 382 by Plaintiff on
19 behalf of himself and other individuals employed by defendant REGENTS who were
20 subjected to claims by the DEFENDANTS for reimbursement of proceeds under
21 employees' UM/UIM coverage.

22 8. Plaintiff seeks, on behalf of himself and the Class, a declaration that
23 defendants' practice of claiming UM/UIM benefits from its employees is unlawful, and
24 seeks a permanent injunction enjoining DEFENDANTS from continuing their unlawful

1 practice of willfully violating the Insurance Code provisions intended to safeguard
2 Plaintiffs' UM/UIM coverage, restitution, and costs and attorneys' fees.

3 **PARTIES**
4

5 9. Plaintiff DAVID LIEBERMAN is a citizen of California and resides in
6 Berkeley, California. He is employed by Defendant REGENTS as a professor at UC
7 Berkeley Law School.

8 10. At all times relevant herein, Defendant REGENTS was a public entity and
9 political subdivision of the State of California that operates in San Francisco and
10 throughout the State of California.

11 12. Defendant BLUE SHIELD of CALIFORNIA ("BLUE SHIELD") is a
13 corporation duly organized and existing under the laws of the State of California, with its
14 principal place of business located in San Francisco, California. It is licensed to conduct
15 business as a healthcare service plan, health/disability insurer and is in the business of
16 providing health plans to consumers throughout this State. BLUE SHIELD contracts
17 with Regents to provide claims administration and provider network services to
18 defendant REGENTS' health plan for its employees. Plaintiff is informed and believes
19 and thereon alleges that, pursuant to that contract, BLUE SHIELD administers claims,
20 provides network, subrogation and reimbursement services and exercises discretion in
21 performing all such duties.

22 23 12. The true names and capacities, whether individual, corporate, associate or
24 otherwise, of DEFENDANTS sued herein as DOES 1 through 50 are currently unknown
25 to Plaintiffs who, therefore, sue these defendants by such fictitious names under Code
26 or Civil Procedure §474. Plaintiffs allege, upon information and belief, that each of the
27
28

1 DOE defendants is legally responsible in some manner for the unlawful acts referred to
2 herein. Plaintiff will seek leave of court to amend this complaint to reflect the true
3 names and capacities of the DEFENDANT designated hereinafter as DOES when such
4 identities become known
5

6 13. Plaintiff is informed and believes and, based thereon, alleges each
7 Defendant acted in all respects pertinent to this action as the agent of the other
8 DEFENDANTS, carried out a joint scheme, business plan or policy in all respects
9 pertinent hereto, and the acts of each DEFENDANT are legally attributable to the other
10 DEFENDANTS.
11

FACTUAL BACKGROUND

12 13. 14. Plaintiff is informed and believes and thereon alleges that as of the date of
15 this complaint, DEFENDANTS have made reimbursement demands from Plaintiffs'
16 UM/UIM coverage throughout the State of California.
17

18 15. Defendant BLUE SHIELD contracts with a Kentucky collection agency,
19 Rawlings and Company, to pursue subrogation and reimbursement from employees of
20 defendant REGENTS from said employees' personal injury claims, including claims
21 from employees' own UM/UIM recoveries.
22

23 16. Acting as agent for the DEFENDANT and each of them, Rawlings has sent
24 multiple demands for reimbursement from any recovery that plaintiff Lieberman should
25 make from his own UM/UIM coverage. Plaintiff Lieberman's personal injury attorney
26 advised Rawlings in writing that any such claim was unlawful under the above
27 Insurance Code, that he was aware that REGENTS was doing the same thing to other
28 employees and that Plaintiff was firm in his position that the practice was unlawful. In

1 response, Rawlings attorney, acting as agent for the DEFENDANTS herein, responded
 2 with a letter dated October 16, 2017, rejecting plaintiff's position and insisting on a right
 3 to plaintiff's UM/UIM coverage under Insurance Code §11580.2. Since that date,
 4 Rawlings has continued to pursue reimbursement from plaintiff Lieberman's UM/UIM
 5 policy, through multiple e-mails, letters and telephone calls, all in violation of the
 6 Insurance Code section cited above.

7
 8 17. REGENTS' web site indicates that it has in excess of 185,000 employees.
 9 Plaintiff is informed and believes and thereon alleges that DEFENDANTS are pursuing
 10 this unlawful practice of demanding recovery from their own employees' UM/UIM
 11 recoveries throughout the State and it is believed that hundreds or thousands of such
 12 claims have been pursued by defendants within the four years prior to the filing of this
 13 complaint.
 14

15 **CLASS ALLEGATIONS**
 16

17 18. Plaintiff brings this class action pursuant to California Code of Civil
 18 Procedure §382. Plaintiff seeks to certify a Class composed of all persons who
 19 obtained requests for reimbursements from their UM/UIM awards from DEFENDANTS,
 20 and fall within Subclass A or B as follows:
 21

22 **SUBCLASS A**
 23

24 **All present and previous employees of REGENTS who are**
 25 **currently facing DEFENDANTS' claims for reimbursement**
 26 **from their own UM/UIM claims but have not paid**
 27 **defendants from said coverage, and REGENTS employees**
 28 **who face such claims in the future.**

SUBCLASS B

All REGENTS employees who have paid reimbursement

Claims to DEFENDANTS or their agents from their

UM/UIM coverage since March 1, 2014.

NUMEROSITY

19. The Class is so numerous that joinder of all individual members in one action would be impracticable. The disposition of the individual claims of the respective class members through this class action will benefit the parties in this Court.

20. Plaintiff is informed and believes, and thereon alleges, that there are, at a minimum, hundreds or thousands of such Class members.

21. The exact size of the Class and the identities of the individual members thereof are ascertainable through DEFENDANTS' records including, but not limited to, Defendants' transactions and through DEFENDANTS' agents acting on their behalf.

TYPICALITY

22. Plaintiff's claims are typical of the Class. The claims of the Plaintiff and the Class are based on the same legal theories and rise from the same unlawful conduct.

23. Plaintiff and the Class members all had their health coverage through their employment with defendant REGENTS, with each receiving demands for reimbursement for UM/UIM recoveries from Defendants. Therefore, DEFENDANTS were in violation of Insurance Code 11580.2(c)(4).

COMMON QUESTIONS OF FACT AND LAW

24. There is a well-defined community of interest and common questions of fact and law affecting members of the Class.

25. The questions of fact and law common to the Class predominate over questions which may affect individual members and include the following:

a. Whether DEFENDANTS' conduct of seeking and receiving reimbursement from Plaintiff and Class members violated Insurance Code §11580.2(c)(4);

b. Whether DEFENDANTS' conduct was willful;

c. Whether Plaintiff and Class members are entitled to restitution, costs and/or attorneys' fees for DEFENDANTS' acts and conduct; and

d. Whether Plaintiff and Class members are entitled to a permanent injunction enjoining DEFENDANTS from continuing to engage in its unlawful conduct.

ADEQUACY OF REPRESENTATION

26. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class. Plaintiff will fairly, adequately and vigorously represent and protect the interests of Class members and have no interests antagonistic to Class members. Plaintiff has retained counsel who are competent and experienced in the prosecution of class action litigation.

SUPERIORITY

27. A class action is superior to other available means for the fair and efficient adjudication of the Class' claims. The restitution to each Class member is easily ascertainable from DEFENDANTS own records. Plaintiff does not know of any other litigation concerning the controversy already commenced by or against any Class

1 member. The likelihood of the individual Class members prosecuting separate claims is
2 remote. Individualized litigation would also present the potential for varying,
3 inconsistent or contradictory judgment, and would increase the delay and expense to all
4 parties and the court system resulting from multiple trials of the same factual issues. In
5 contrast, the conduct of this matter as a class action presents fewer management
6 difficulties, conserves the resources of the parties and the court system, and would
7 protect the rights of members of the Class. Plaintiff knows of no difficulty to be
8 encountered in the management of this action that would preclude its maintenance as a
9 class action.

12 **FIRST CAUSE OF ACTION**

13 **Complaint for Declaratory Relief**

14 **(Against All DEFENDANTS and DOES 1-50)**

15 28. Plaintiff and the Class incorporate by reference each of the preceding
16 paragraphs as though fully set forth herein.

18 29. A Declaratory Judgment is necessary in that Plaintiff contends, and
19 DEFENDANTS deny, the following:

20 The UC REGENTS and BLUE SHIELD's claim of reimbursement
21 Rights to Plaintiff's UM/UIM proceeds is an unlawful act
22 under Insurance Code 11580.2(c)(4) and said defendants' reimbursement
23 provision in their health plan purporting to allow defendants to lay claim to
24 employees" UM/UIM coverage is unlawful. (See attached Exhibit 1)

27
28

30. The DEFENDANTS have willfully violated Insurance Code 11580.2(c)(4) in conscious disregard of the rights of Plaintiff and Class members through demanding and/or obtaining reimbursement of UM/UIM awards in violation of the law.

SECOND CAUSE OF ACTION

**Complaint for Preliminary and Permanent Injunctive Relief
(Against All DEFENDANTS and DOES 1-50)**

31. Plaintiff and the Class incorporate by reference each of the preceding paragraphs as though fully set forth herein.

32. An actual controversy has arisen and now exists between the parties relating to the REGENTS' claimed entitlement to reimbursement for medical expenses paid under a group health plan from Plaintiff's policy proceeds.

33. A preliminary and permanent injunction enjoining DEFENDANTS from asserting any right to restitution or reimbursement from uninsured or underinsured motorist insurance coverage under any group health plan issued by defendants is necessary to protect Plaintiffs in said group health plan(s).

34. DEFENDANTS' actions were and continue to be willful. Defendants' conduct is continuing and unless restrained, DEFENDANTS will continue to engage in its unlawful conduct.

35. DEFENDANTS' wrongful conduct, unless and until enjoined and restrained by order of this court, will cause great and irreparable harm to Plaintiff and the Class because the mentioned violation by defendants will continue unabated.

THIRD CAUSE OF ACTION

Unjust Enrichment/Restitution

(Against ALL DEFENDANTS and DOES 1-50)

36. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein.

37. DEFENDANTS have been unjustly enriched as a result of the conduct described in this Complaint and other inequitable conduct.

38. Plaintiff alleges that DEFENDANTS' have pursued an unlawful practice of demanding recovery from their own employees' UM/UIM recoveries in violation of Insurance Code §11580.2(c)(4).

39. DEFENDANTS have been unjustly enriched by their unlawful retention of part of Plaintiffs' UM/UIM recoveries and it would be inequitable and unjust for DEFENDANTS to continue to retain those amounts.

40. Accordingly, Plaintiffs seek a return of all benefits that have been conferred on DEFENDANTS and by which they have been unjustly enriched in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

Violations of Business and Professions Code Section 17200, et seq.

Unlawful and Unfair Business Acts and Practice

(Against Blue Shield and DOES 1-50)

41. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein.

1 42. Plaintiff asserts this Cause of Action individually and on behalf of all
2 members of the Class against Defendant BLUE SHIELD and Does 1-50 for unlawful
3 and unfair business practices, as defined by California Business and Professions Code
4 §17200, *et seq.*
5

6 43. Plaintiff is informed and believes and thereon alleges that said
7 DEFENDANTS' conduct violates California Business and Professions Code §17200, *et*
8 *seq.* The acts and practices of DEFENDANTS constitute a common continuing course
9 of conduct of unfair competition by means of unlawful and unfair business acts or
10 practices within the meaning of §17200.
11

12 44. Pursuant to Business and Professions Code section 17203, Plaintiff and
13 members of the Class seek from defendants, and each of them, restitution and
14 disgorgement of all recoveries from REGENTS' employees UM/UIM coverage obtained
15 through the Unlawful and Unfair Business Practices set forth in this Complaint and
16 other ill-gotten gains obtained by DEFENDANTS as a result of DEFENDANTS' conduct
17 in violation of Business and Professions Code section 17200 obtained through the
18 Unlawful and Unfair Business Practices set forth in this Complaint and other ill-gotten
19 gains obtained by DEFENDANTS as a result of DEFENDANTS' conduct in violation of
20 Business and Professions Code section 17200.
21

22 45. Pursuant to Business and Professions Code section 17204, Plaintiff and
23 members of the Class seek an order of this Court enjoining DEFENDANTS, and each of
24 them, from continuing to engage in the acts set forth in this Complaint, which acts
25 constitute violations of Business and Professions Code section 17200, *et seq.* Plaintiff
26 and the Class will be irreparably harmed if such an order is not granted.
27
28

1 46. Said employee benefit plans provided by Defendant BLUE SHIELD contain
2 unlawful provisions purporting to allow BLUE SHIELD to seek reimbursement from
3 Plaintiffs' UM/UIM coverage from the health plans which violate California Business and
4 professions Code section 17200 et.seq and Insurance Code section 11580.2(c)(4).
5

6 47. Participants and beneficiaries of said employee benefit plans who have
7 paid any UM/UIM benefits to BLUE SHIELD in the past are entitled to restitution to
8 recover those amounts collected in violation of California insurance law, and to prevent
9 the unjust and illegal enrichment of BLUE SHIELD and/or its agents.
10

11 48. Participants and beneficiaries of said employee benefits plans who have
12 not paid any UM/UIM benefits to BLUE SHIELD but are subject to present or future
13 claims against their UM/UIM benefits by BLUE SHIELD are entitled to a
14 declaration/clarification of their right to present, or future benefits, without any such
15 claims being asserted against their UM/UIM benefits.
16

17 49. Plaintiff also seeks an order awarding attorneys' fees and costs pursuant
18 to Code of Civil Procedure section 1021.5.
19

20 50. Plaintiff and the Class have suffered substantial injury in the form of
21 actionable losses of money as a direct and proximate result of DEFENDANTS' unlawful
22 and unfair business practices.
23

PRAYER FOR RELIEF

24 Plaintiff, on his own behalf and on behalf of the Class, pray for relief as follows,
25 as applicable to the causes of action set forth above:
26
27
28

1 1. For a Judicial Declaration that ALL DEFENDANTS have violated Insurance
2 Code section 11580.2(c)(4), by demanding and laying claim to UM/UIM proceeds by the
3 Plaintiff and the proposed Class.
4

5 2. For Preliminary and Permanent Injunctive Relief, enjoining ALL
6 DEFENDANTS from continuing to assert any claims for reimbursement from the
7 UM/UIM claims of the REGENTS employees.
8

9 3. For an Order certifying the proposed Class pursuant to Code of Civil
10 Procedure section 382 and Civil Code section 1780, *et seq.* against ALL DEFENDANTS
11 and appointing Plaintiff to represent the proposed Class and designating their attorneys
12 as Class Counsel.
13

14 4. Under Business and Professions Code section 17203, Plaintiff, and the
15 general public, seek an Order of this Court ordering BLUE SHIELD and DOES 1
16 through 50 to immediately cease all acts of unfair competition and to enjoin said
17 DEFENDANTS from continuing to conduct business via unlawful and/or unfair business
18 acts or practices as particularized herein.
19

20 5. For Class Plaintiffs who have REGENTS health coverage and who have
21 paid reimbursement from their UM/UIM recoveries to DEFENDANTS or their agents, an
22 Order of restitution in the amount of the UM/UIM benefits paid.
23

24 6. For Class Plaintiffs who have REGENTS health coverage pursuant to the
25 REGENTS employee benefit plan, and who are being subjected to a reimbursement
26 claim by DEFENDANTS from their UM/UIM recoveries, a declaration and clarification of
27 their right to be free of such claims.
28

1 7. For a preliminary and permanent injunction enjoining ALL DEFENDANTS
2 from asserting any right to restitution or reimbursement from UM/UIM coverage under
3 any disability or group health plan issued by REGENTS.
4

5 8. For an Order requiring DEFENDANTS, and DOES 1 through 50, to give
6 notice of this action, to participants in a REGENTS health plan, who within four years of
7 the filing of the Complaint, had uninsured or underinsured motorist insurance policy
8 proceeds paid over to DEFENDANTS or their agents.
9

10 9. For an Order requiring DEFENDANTS and DOES 1 through 50, to identify
11 all health plan members who, within four years of the filing of this Complaint, paid over
12 uninsured and underinsured motorist policy benefits to defendants or their agents.
13

14 10. For an Order directing REGENTS and BLUE SHIELD to notify all "Class
15 Members" who are presently subject to its collection efforts against said members'
16 UM/UIM coverage of this action and notifying said members of its withdrawal of any and
17 all claims for reimbursement from such coverage.
18

19 11. For an Order awarding Plaintiff and the Class restitution of all uninsured
20 and underinsured policy benefits recovered from REGENTS group health plan
21 participants and such other relief as the Court deems proper.
22

23 12. For an Order declaring the rights and obligations of Plaintiff and Class
24 Members, on the one hand, and BLUE SHIELD, on the other, with regard to the
25 business practices alleged.
26

27 13. For an Order awarding Plaintiffs' attorneys' fees, costs and expenses as
28 authorized by applicable law; and
29

30 14. For such other and further relief as this Court may deem just and proper.
31

1 Dated: February 18, 2017

2 
3 **O'MARA & PADILLA**
4 By: MICHAEL D. PADILLA
5 Law Offices of Donald M. de Camara
6 Law Offices of Thomas D. Haklar
7 Attorneys for Plaintiff

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VERIFICATION OF COMPLAINT

I, David Lieberman, declare as follows:

1. I am the Plaintiff in the above-entitled action. I am a citizen and resident of the State of California.
2. I have personal knowledge of the facts alleged by me in the foregoing Complaint, and if called upon to testify I could competently testify to those facts, except as to those matters set forth on information and belief, and as to those matters, I am informed and believe them to be true.
3. I declare and verify under penalty of perjury under the laws of the State of California that I have read the foregoing Complaint and the factual allegations therein are true and correct.

Executed on February 23, 2018.

David Lieberman
DAVID LIEBERMAN

Core Plan

Benefit Booklet

University of California

Group Number: W0051612

Plan ID: PPOX0002

Effective Date: January 1, 2016

An independent member of the Blue Shield Association

blue  of California

Claims Administered by Blue Shield of California

blueshieldca.com

EXHIBIT 1

vided to you at a Veterans Administration facility for a condition that is not related to military service. If you are a qualified veteran who is not on active duty, your Claims Administrator group plan will pay the reasonable value or the Claims Administrator's Allowable Amount for Covered Services provided to you at a Department of Defense facility, even if provided for conditions related to military service.

When you are covered by another government agency

If you are also entitled to benefits under any other federal or state governmental agency, or by any municipality, county or other political subdivision, the combined benefits from that coverage and your Claims Administrator group plan will equal, but not exceed, what the Claims Administrator would have paid if you were not eligible to receive benefits under that coverage (based on the reasonable value or the Claims Administrator's Allowable Amount).

Contact the Customer Service department at the telephone number shown at the end of this document if you have any questions about how the Claims Administrator coordinates your group plan benefits in the above situations.

EXCEPTION FOR OTHER COVERAGE

Participating Providers and Preferred Providers may seek reimbursement from other third party payers for the balance of their reasonable charges for Services rendered under this Plan.

CLAIMS REVIEW

The Claims Administrator reserves the right to review all claims to determine if any exclusions or other limitations apply. The Claims Administrator may use the services of Physician consultants, peer review committees of professional societies or Hospitals and other consultants to evaluate claims.

REDUCTIONS – THIRD PARTY LIABILITY

If a Member's injury or illness was, in any way, caused by a third party who may be legally liable or responsible for the injury or illness, no benefits will be payable or paid under the Plan unless the Member agrees in writing, in a form satisfactory to the Plan, to do all of the following:

1. Provide the Plan with a written notice of any claim made against the third party for damages as a result of the injury or illness;
2. Agree in writing to reimburse the Plan for Benefits paid by the Plan from any Recovery (defined below) when the Recovery is obtained from or on behalf of the third party or the insurer of the third party, or from the Member's own uninsured or underinsured motorist coverage;
3. Execute a lien in favor of the Plan for the full amount of Benefits paid by the Plan;

4. Ensure that any Recovery (see below) is kept separate from and not comingled with any other funds and agree in writing that the portion of any Recovery required to satisfy the lien of the Plan is held in trust for the sole benefit of the Plan until such time it is conveyed to the Plan;
5. Periodically respond to information requests regarding the claim against the third party, and notify the Plan, in writing, within 10 days after any Recovery has been obtained;
6. Direct any legal counsel retained by the Member or any other person acting on behalf of the Member to hold that portion of the Recovery to which the Plan is entitled in trust for the sole benefit of the Plan and to comply with and facilitate the reimbursement to the Plan of the monies owed it.

If a Member fails to comply with the above requirements, no benefits will be paid with respect to the injury or illness. If Benefits have been paid, they may be recouped by the Plan, through deductions from future benefit payments to the Member or others enrolled through the Member in the Plan.

"Recovery" includes any amount awarded to or received by way of court judgment, arbitration award, settlement or any other arrangement, from any third party or third party insurer, or from your uninsured or underinsured motorist coverage, related to the illness or injury, without reduction for any attorneys' fees paid or owed by the Member or on the Member's behalf, and without regard to whether the Member has been "made whole" by the Recovery. Recovery does not include monies received from any insurance policy or certificate issued in the name of the Member, except for uninsured or underinsured motorist coverage. The Recovery includes all monies received, regardless of how held, and includes monies directly received as well as any monies held in any account or trust on behalf of the Member, such as an attorney-client trust account.

The Member shall pay to the Plan from the Recovery an amount equal to the Benefits actually paid by the Plan in connection with the illness or injury. If the Benefits paid by the Plan in connection with the illness or injury exceed the amount of the Recovery, the Member shall not be responsible to reimburse the Plan for the Benefits paid in connection with the illness or injury in excess of the Recovery.

The Member's acceptance of Benefits from the Plan for illness or injury caused by a third party shall act as a waiver of any defense to full reimbursement of the Plan from the Recovery, including any defense that the injured individual has not been "made whole" by the Recovery or that the individual's attorneys fees and costs, in whole or in part, are required to be paid or are payable from the Recovery, or that the Plan should pay a portion of the attorneys fees and costs incurred in connection with the claims against the third party.

If the Member receives Services from a Participating Hospital for injuries or illness, the Hospital has the right to collect from the Member the difference between the amount paid by the Plan and the Hospital's reasonable and necessary charges for such Services when payment or reimbursement is received by the Member for medical expenses. The Hospital's right to collect shall be in accordance with California Civil Code Section 3045.1.

COORDINATION OF BENEFITS

When a Member who is covered under this group Plan is also covered under another group plan, or selected group, or blanket disability insurance contract, or any other contractual arrangement or any portion of any such arrangement whereby the members of a group are entitled to payment of or reimbursement for Hospital or medical expenses, such Member will not be permitted to make a "profit" on a disability by collecting benefits in excess of actual cost during any Calendar Year. Instead, payments will be coordinated between the plans in order to provide for "allowable expenses" (these are the expenses that are incurred for services and supplies covered under at least one of the plans involved) up to the maximum benefit amount payable by each plan separately.

If the covered Member is also entitled to benefits under any of the conditions as outlined under the "Limitations for Duplicate Coverage" provision, benefits received under any such condition will not be coordinated with the benefits of this Plan.

The following rules determine the order of benefit payments:

When the other plan does not have a coordination of benefits provision it will always provide its benefits first. Otherwise, the plan covering the Member as an Employee will provide its benefits before the plan covering the Member as a Dependent.

Except for cases of claims for a Dependent child whose parents are separated or divorced, the plan which covers the Dependent child of a Member whose date of birth (excluding year of birth), occurs earlier in a Calendar Year, will determine its benefits before a plan which covers the Dependent child of a Member whose date of birth (excluding year of birth), occurs later in a Calendar Year. If either plan does not have the provisions of this paragraph regarding Dependents, which results either in each plan determining its benefits before the other or in each plan determining its benefits after the other, the provisions of this paragraph will not apply, and the rule set forth in the plan which does not have the provisions of this paragraph will determine the order of benefits.

1. In the case of a claim involving expenses for a Dependent child whose parents are separated or divorced, plans covering the child as a Dependent will determine their respective benefits in the following order: First, the plan of the parent with custody of the child; then, if that parent has remarried, the plan of the stepparent with

custody of the child; and finally the plan(s) of the parent(s) without custody of the child.

2. Regardless of (1.) above, if there is a court decree which otherwise establishes financial responsibility for the medical, dental or other health care expenses of the child, then the plan which covers the child as a Dependent of that parent will determine its benefits before any other plan which covers the child as a Dependent child.
3. If the above rules do not apply, the plan which has covered the Member for the longer period of time will determine its benefits first, provided that:
 - a plan covering a Member as a laid-off or retired Employee, or as a Dependent of that Member will determine its benefits after any other plan covering that Member as an Employee, other than a laid-off or retired Employee, or such Dependent; and
 - b. if either plan does not have a provision regarding laid-off or retired Employees, which results in each plan determining its benefits after the other, then paragraph (a.) above will not apply.

If this Plan is the primary carrier in the case of a covered Member, then this Plan will provide its Benefits without making any reduction because of benefits available from any other plan, except that Physician Members and other Participating Providers may collect any difference between their billed charges and this Plan's payment, from the secondary carrier(s).

If this Plan is the secondary carrier in the order of payments, and the Claims Administrator is notified that there is a dispute as to which plan is primary, or that the primary plan has not paid within a reasonable period of time, this Plan will pay the benefits that would be due as if it were the primary plan, provided that the covered Member (1) assigns to the Claims Administrator the right to receive benefits from the other plan to the extent of the difference between the benefits which the Claims Administrator actually pays and the amount that the Claims Administrator would have been obligated to pay as the secondary plan, (2) agrees to cooperate fully with the Claims Administrator in obtaining payment of benefits from the other plan, and (3) allows the Claims Administrator to obtain confirmation from the other plan that the benefits which are claimed have not previously been paid.

If payments which should have been made under this Plan in accordance with these provisions have been made by another plan, the Claims Administrator may pay to the other plan the amount necessary to satisfy the intent of these provisions. This amount shall be considered as Benefits paid under this Plan. The Claims Administrator shall be fully discharged from liability under this Plan to the extent of these payments.

If payments have been made by the Claims Administrator in excess of the maximum amount of payment necessary to satisfy these provisions, the Claims Administrator shall

SUMMONS
(CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: REGENTS OF THE UNIVERSITY OF
(AVISO AL DEMANDADO): CALIFORNIA; BLUE SHIELD OF
CALIFORNIA, and DOES 1 to 50, inclusive

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ORIGINAL

YOU ARE BEING SUED BY PLAINTIFF: DAVID LIEBERMAN,
(LO ESTÁ DEMANDANDO EL DEMANDANTE): Individually and on
Behalf of all Others Similarly Situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

SAN FRANCISCO COUNTY SUPERIOR COURT
400 McAllister Street
San Francisco, CA 94102
CIVIL CENTER COURTHOUSE

CASE NUMBER:
(Número de Caso):

CGC-18-564930

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

MICHAEL D. PADILLA, SBN 67060/JEFFREY M. PADILLA, SBN 239693 T 858-481-5454 F 858-720-9797

O'MARA & PADILLA

320 Encinitas Blvd., Suite A
Encinitas, CA 92024

DATE: **MAR 12 2018**
(Fecha)

Clerk of the Court

Clerk, by
(Secretario)

, Deputy
(Adjunto)

NEYL WEBB

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under: CCP 416.10 (corporation)

CCP 416.20 (defunct corporation)

CCP 416.40 (association or partnership)

other (specify):

CCP 416.60 (minor)

CCP 416.70 (conservatee)

CCP 416.90 (authorized person)

4. by personal delivery on (date):



EXHIBIT B

March 22, 2018

Advanced Attorney Services, Inc. fax (619) 299-5058

POS-010

| | | |
|--|---------------------|----------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) | | SBN: 6706 |
| MICHAEL D. PADILLA, ESQ. O'MARA & PADILLA 320 ENCINITAS BLVD., SUITE A ENCINITAS, CA 92024 | | |
| TELEPHONE NO.: (858) 481-5454 | FAX NO. (Optional): | (858) 720-9797 |
| E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff: DAVID LIEBERMAN | | |
| SUPERIOR COURT OF CALIFORNIA, SAN FRANCISCO | | |
| STREET ADDRESS: 400 MCALLISTER STREET, ROOM 103 | | |
| MAILING ADDRESS: | | |
| CITY AND ZIP CODE: SAN FRANCISCO, CA 94102 | | |
| BRANCH NAME: CIVIC CENTER | | |
| PLAINTIFF/PETITIONER: DAVID LIEBERMAN, ET AL | | |
| DEFENDANT/RESPONDENT: REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL | | |
| PROOF OF SERVICE OF SUMMONS | | |

FOR COURT USE ONLY

ELECTRONICALLY
FILEDSuperior Court of California,
County of San Francisco

04/16/2018

Clerk of the Court

BY: YOLANDA TABO-RAMII

Deputy Clerk

CASE NUMBER:

CGC-18-564930

Ref. No. or File No.: LIEBERMAN

(Separate proof of service is required for each party served.)

BY FAX

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:

- a. summons
- b. complaint
- c. Alternative Dispute Resolution (ADR) package
- d. Civil Case Cover Sheet (*served in complex cases only*)
- e. cross-complaint
- f. other (*specify documents*): CIVIL CASE COVER SHEET; NTC TO PLAINTIFF; MEDIATION SERVICES HANDOUT; ADR PROGRAM INFO PKG; EXPEDITED JURY TRIAL INFO SHEET; STIP TO USE ADR AND CASE MGT STATEMENT

3. a. Party served (*specify name of party as shown on documents served*):

BLUE SHIELD OF CALIFORNIA

- b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (*specify name and relationship to the party named in item 3a*):
BRETON NICOLSON - PERSON AUTHORIZED TO ACCEPT

4. Address where the party was served: 50 BEALE STREET
SAN FRANCISCO, CA 94105

5. I served the party (*check proper box*)

- a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (*date*): 03/21/2018 (2) at (*time*): 02:20 pm

- b. by substituted service. On (*date*): at (*time*): I left the documents listed in item 2 with or in the presence of (*name and title or relationship to person indicated in item 3b*):

- (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
- (2) (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
- (3) (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
- (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., §415.20). I mailed the documents on (*date*): from (*city*): or a declaration of mailing is attached.
- (5) I attach a **declaration of diligence** stating actions taken first to attempt personal service.

March 22, 2018

Advanced Attorney Services, Inc. fax (619) 299-5056

| | |
|--|-------------------------------|
| PETITIONER: DAVID LIEBERMAN, ET AL | CASE NUMBER: CGC-18-564930 |
| RESPONDENT: REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL | BY FAX |

c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on (date): (2) from (city):

(3) with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)

(4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant.
- b. as the person sued under the fictitious name of (specify):
- c. as occupant.
- d. On behalf of (specify): **BLUE SHIELD OF CALIFORNIA**
under the following Code of Civil Procedure section:

| | |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

a. Name: **ANDY ESQUER - Advanced Attorney Services, Inc.**

b. Address: **3500 Fifth Ave., Suite 202 San Diego, CA 92103**

c. Telephone number: **(619) 299-2012**

d. The fee for service was: **\$ 142.90**

e. I am:

- (1) not a registered California process server.
- (2) exempt from registration under Business and Professions Code section 22350(b).
- (3) registered California process server:
 - (i) owner employee independent contractor.
 - (ii) Registration No.: **2015-0001009**
 - (iii) County: **SAN FRANCISCO**

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: **03/22/2018**



Advanced Attorney Services, Inc.
3500 Fifth Ave., Suite 202
San Diego, CA 92103
(619) 299-2012
San Diego County: 1584

ANDY ESQUER
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



March 26, 2018

Advanced Attorney Services, Inc. fax (619) 269-5058

POS-010

| | | |
|--|---------------------|----------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) | | SBN: 6706 |
| MICHAEL D. PADILLA, ESQ. O'MARA & PADILLA 320 ENCINITAS BLVD., SUITE A ENCINITAS, CA 92024 | | |
| TELEPHONE NO.: (858) 481-5454 | FAX NO. (Optional): | (858) 720-9797 |
| E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff: DAVID LIEBERMAN | | |
| SUPERIOR COURT OF CALIFORNIA, SAN FRANCISCO | | |
| STREET ADDRESS: 400 MCALLISTER STREET, ROOM 103 | | |
| MAILING ADDRESS: | | |
| CITY AND ZIP CODE: SAN FRANCISCO, CA 94102 | | |
| BRANCH NAME: CIVIC CENTER | | |
| PLAINTIFF/PETITIONER: DAVID LIEBERMAN, ET AL. | | |
| DEFENDANT/RESPONDENT: REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL. | | |
| PROOF OF SERVICE OF SUMMONS | | |

| | |
|--|---------------|
| FOR COURT USE ONLY | |
| ELECTRONICALLY FILED | |
| Superior Court of California, County of San Francisco | |
| 04/16/2018 | |
| Clerk of the Court | |
| BY: YOLANDA TABO-RAMII | |
| Deputy Clerk | |
| CASE NUMBER: | CGC-18-564930 |
| Ref. No. or File No.: | LIEBERMAN |

(Separate proof of service is required for each party served.)

BY FAX

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (*served in complex cases only*)
 - e. cross-complaint
 - f. other (*specify documents*): CIVIL CASE COVER SHEET; NTC TO PLAINTIFF; MEDIATION SERVICES HANDOUT; ADR PROGRAM INFO PKG, EXPEDITED JURY TRIAL INFO SHEET; STIP TO USE ADR AND CASE MGT STATEMENT
3. a. Party served (*specify name of party as shown on documents served*):

REGENTS OF THE UNIVERSITY OF CALIFORNIA

b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (*specify name and relationship to the party named in item 3a*):
TRINA D. MASTRO, ESQ. - PERSON AUTHORIZED TO ACCEPT
4. Address where the party was served: **1111 FRANKLIN STREET, 8TH FLOOR**
OAKLAND, CA 94607
5. I served the party (*check proper box*)
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (*date*): 03/21/2018 (2) at (*time*): 11:23 am
 - b. **by substituted service.** On (*date*): at (*time*): I left the documents listed in item 2 with or in the presence of (*name and title or relationship to person indicated in item 3b*):
 - (1) (**business**) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) (**home**) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) (**physical address unknown**) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., §415.20). I mailed the documents on (*date*): from (*city*): or a declaration of mailing is attached.
 - (5) I attach a declaration of diligence stating actions taken first to attempt personal service.

March 26, 2018

Advanced Attorney Services, Inc. fax (619) 299-5058

PETITIONER: DAVID LIEBERMAN, ET AL.

CASE NUMBER:

RESPONDENT: REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL. BY FAX

CGC-18-564930

c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on (date): (2) from (city):

(3) with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)

(4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

a. as an individual defendant.

b. as the person sued under the fictitious name of (specify):

c. as occupant.

d. On behalf of (specify): REGENTS OF THE UNIVERSITY OF CALIFORNIA under the following Code of Civil Procedure section:

| | |
|---|---|
| <input type="checkbox"/> 416.10 (corporation) | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input checked="" type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. Person who served papers

a. Name: ISAAC G. MEYNARD - Advanced Attorney Services, Inc.

b. Address: 3500 Fifth Ave., Suite 202 San Diego, CA 92103

c. Telephone number: (619) 299-2012

d. The fee for service was: \$ 142.90

e. I am:

(1) not a registered California process server.
 (2) exempt from registration under Business and Professions Code section 22350(b).
 (3) registered California process server:
 (i) owner employee independent contractor.
 (ii) Registration No.: 2016-0001159
 (iii) County: SAN FRANCISCO

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 03/26/2018

Advanced Attorney Services, Inc.
 3500 Fifth Ave., Suite 202
 San Diego, CA 92103
 (619) 299-2012
 San Diego County: 1584

ISAAC G. MEYNARD
 (NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

EXHIBIT C

CM-010

| | |
|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Gregory Pimstone (SBN 150203), Joseph Laska (SBN 221055) MANATT, PHELPS & PHILLIPS, LLP One Embarcadero Center, 30th Floor San Francisco, California 94111 TELEPHONE NO.: (415) 291-7446 FAX NO.: (415) 291-7474 ATTORNEY FOR (Name): Defendant Blue Shield of California | |
|---|--|

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister St.
MAILING ADDRESS: 400 McAllister St.
CITY AND ZIP CODE: San Francisco, CA 94102-4515
BRANCH NAME: Civic Center Courthouse

CASE NAME:
Lieberman et al. v. Regents of the University of California, et al.

| | | | |
|---|---|--|----------------------------------|
| CIVIL CASE COVER SHEET | | Complex Case Designation | CASE NUMBER: |
| <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) | <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) | <input checked="" type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) | CGC-18-564930 |
| | | JUDGE: Presiding Judge | DEPT: Dept 206 (Master Calendar) |

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

Auto (22)
 Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
 Product liability (24)
 Medical malpractice (45)
 Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

Business tort/unfair business practice (07)
 Civil rights (08)
 Defamation (13)
 Fraud (16)
 Intellectual property (19)
 Professional negligence (25)
 Other non-PI/PD/WD tort (35)

Employment

Wrongful termination (36)
 Other employment (15)

Contract

Breach of contract/warranty (06)
 Rule 3.740 collections (09)
 Other collections (09)
 Insurance coverage (18)
 Other contract (37)

Real Property

Eminent domain/Inverse condemnation (14)
 Wrongful eviction (33)
 Other real property (26)

Unlawful Detainer

Commercial (31)
 Residential (32)
 Drugs (38)

Judicial Review

Asset forfeiture (05)
 Petition re: arbitration award (11)
 Writ of mandate (02)
 Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

Antitrust/Trade regulation (03)
 Construction defect (10)
 Mass tort (40)
 Securities litigation (28)
 Environmental/Toxic tort (30)
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

Enforcement of judgment (20)

Miscellaneous Civil Complaint

RICO (27)
 Other complaint (not specified above) (42)

Miscellaneous Civil Petition

Partnership and corporate governance (21)
 Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. Large number of separately represented parties
b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. Substantial amount of documentary evidence
d. Large number of witnesses
e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Four (4) causes of action

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 5/1/2018

Joseph Laska

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

Auto Tort

- Auto (22)–Personal Injury/Property
- Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death)**Tort**

- Asbestos (04)
- Asbestos Property Damage
- Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
- Medical Malpractice–Physicians & Surgeons
- Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
- Premises Liability (e.g., slip and fall)
- Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
- Intentional Infliction of Emotional Distress
- Negligent Infliction of Emotional Distress
- Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
- Legal Malpractice
- Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

CASE TYPES AND EXAMPLES**Contract**

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease
- Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case–Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
- Auto Subrogation
- Other Coverage
- Other Contract (37)
- Contractual Fraud
- Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
- Writ of Possession of Real Property
- Mortgage Foreclosure
- Quiet Title
- Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
- Writ–Administrative Mandamus
- Writ–Mandamus on Limited Court Case Matter
- Writ–Other Limited Court Case Review
- Other Judicial Review (39)
- Review of Health Officer Order
- Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
- Abstract of Judgment (Out of County)
- Confession of Judgment (*non-domestic relations*)
- Sister State Judgment
- Administrative Agency Award (*not unpaid taxes*)
- Petition/Certification of Entry of Judgment on Unpaid Taxes
- Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
- Declaratory Relief Only
- Injunctive Relief Only (*non-harassment*)
- Mechanics Lien
- Other Commercial Complaint Case (*non-tort/non-complex*)
- Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
- Civil Harassment
- Workplace Violence
- Elder/Dependent Adult Abuse
- Election Contest
- Petition for Name Change
- Petition for Relief From Late Claim
- Other Civil Petition

| | | |
|---|---|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Joshua S. Goodman (SBN 116576), Patricia L. Bonheyo (SBN 194155) GOODMAN NEUMAN HAMILTON, LLP 417 Montgomery St., 10th Floor San Francisco, California 94104 TELEPHONE NO.: (415) 705-0400 FAX NO.: (415) 705-0411 ATTORNEY FOR (Name): Defendant Regents of the University of California | | FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Francisco 05/01/2018 Clerk of the Court BY: ANNA TORRES Deputy Clerk |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister St. MAILING ADDRESS: 400 McAllister St. CITY AND ZIP CODE: San Francisco, CA 94102-4515 BRANCH NAME: Civic Center Courthouse | | |
| CASE NAME: Lieberman et al. v. Regents of the University of California, et al. | | |
| CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000) (Amount demanded is \$25,000 or less) | Complex Case Designation <input checked="" type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) | CASE NUMBER: CGC-18-564930 |
| JUDGE: Presiding Judge DEPT: Dept 206 (Master Calendar) | | |

Items 1-6 below must be completed (see instructions on page 2):

| | | | | | |
|--|--|--|--|---|---|
| 1. Check one box below for the case type that best describes this case: | <input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <input type="checkbox"/> Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <input type="checkbox"/> Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <input type="checkbox"/> Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15) | | | <input type="checkbox"/> Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input checked="" type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <input type="checkbox"/> Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <input type="checkbox"/> Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
|--|--|--|--|---|---|

2. This case is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- Large number of separately represented parties
- Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- Substantial amount of documentary evidence
- Large number of witnesses
- Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Four (4) causes of action

5. This case is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 5/1/2018
 Joshua S. Goodman

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

PROOF OF SERVICE

CASE NAME: Lieberman, et al. v. Regents of the University of California, et al.
CASE NUMBER: CGC-18-564930
DATE OF SERVICE: May 1, 2018

DESCRIPTION OF DOCUMENTS SERVED:

CIVIL CASE COVER SHEET – COMPLEX CASE DESIGNATION

SERVED ON THE FOLLOWING:

Michael Padilla
Jeffrey Padilla
O'MARA & PADILLA
320 Encinitas Blvd., Suite A
Encinitas, CA 92024
Attorneys for Plaintiffs

Donald M. De Camara
LAW OFFICES OF DONALD M. DE
CAMARA
1241 Carlsbad Village Drive, Suite E
Carlsbad, CA 92008
Attorneys for Plaintiffs

Thomas D. Haklar
LAW OFFICE OF THOMAS D. HAKLAR
320 Encinitas Blvd., Suite A
Encinitas, CA 92024
Attorneys for Plaintiffs

I am over the age of 18 years and not a party to or interested in the above-named case. I am an employee of Goodman Neuman Hamilton LLP, and my business address is 417 Montgomery Street, 10th Floor, San Francisco, CA 94104. On the date stated above, I served the above-entitled document(s) through File & ServeXpress addressed to all parties appearing on the File & ServeXpress electronic service list by selecting the individual recipients on the File & ServeXpress website. The file transmission was reported as complete and a copy of the filing receipt page will be maintained with the original document in our office.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the date stated above.

J. Trayner
Jeffrey Trayner

Goodman
Neuman
Hamilton LLP
417 Montgomery St.
10th Floor
San Francisco, CA
94104
Tel.: (415) 705 0400

1 MANATT, PHELPS & PHILLIPS, LLP
2 GREGORY N. PIMSTONE (Bar No. 150203)
3 gpimstone@manatt.com
4 SARAH E. GETTINGS (Bar No. 260436)
5 sgettings@manatt.com
6 11355 West Olympic Boulevard
7 Los Angeles, CA 90064-1614
8 Telephone: (310) 312-4000
9 Facsimile: (310) 312-4224

6 MANATT, PHELPS & PHILLIPS, LLP
7 JOSEPH E. LASKA (Bar No. 221055)
8 Email: jlaska@manatt.com
9 One Embarcadero Center, 30th Floor
San Francisco, CA 94111
Telephone: (415) 291-7400
Facsimile: (415) 291-7474

10 Attorneys for Defendant
11 BLUE SHIELD OF CALIFORNIA

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

15 DAVID LIEBERMAN, individually and on
16 behalf of all others similarly situated,

17 Plaintiffs,

18 vs.

19 REGENTS OF THE UNIVERSITY OF
20 CALIFORNIA; BLUE SHIELD OF
CALIFORNIA; and DOES 1 THROUGH
50, INCLUSIVE,

21 Defendants.

23 Case No. CGC-18-564930

24 **FILED AS CLASS ACTION**

25 **DEFENDANT BLUE SHIELD OF
CALIFORNIA'S UNOPPOSED
APPLICATION FOR APPROVAL OF
COMPLEX DESIGNATION**

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
05/15/2018
Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

1 **I. INTRODUCTION**

2 Defendant Blue Shield of California (“Blue Shield”) files this Application for Approval of
 3 Complex Designation under California Rule of Court 3.400. This putative class action meets the
 4 criteria for designation as a complex case. The case is provisionally complex because it is a state-
 5 wide class action. As set forth below, it also satisfies the discretionary criteria for complex
 6 designation.

7 Blue Shield met and conferred with counsel for Plaintiff and Defendant Regents of the
 8 University of California (“UC Regents”). Neither Plaintiff nor UC Regents objects to this case
 9 being designated complex.

10 **II. ARGUMENT**

11 **A. Legal standard**

12 “A ‘complex case’ is an action that requires exceptional judicial management to avoid
 13 placing unnecessary burdens on the Court or the litigants and to expedite the case, keep costs
 14 reasonable, and promote effective decision making by the court, the parties, and counsel.” Cal.
 15 Rule of Ct. 3.400(a).

16 A case is deemed “provisionally complex” if it involves “claims involving class actions”
 17 or “[i]nsurance coverage claims arising out of [class actions].” Cal. Rule of Ct. 3.400(d)(6)-(7).
 18 A complex designation is also appropriate if the action is likely to involve:

- 19 (1) Numerous pretrial motions raising difficult or novel legal issues that will be time
 20 consuming to resolve;
- 21 (2) Management of a large number of witnesses or a substantial amount of documentary
 22 evidence;
- 23 (3) Management of a large number of separately represented parties;
- 24 (4) Coordination with related actions pending in one or more courts in other counties,
 25 states, or countries, or in a federal court; or
- 26 (5) Substantial postjudgment judicial supervision.

27 Cal. Rule of Ct. 3.400(b).

1 **B. This state-wide class action meets the criteria for complex designation.**

2 This putative class action meets the criteria for designation as a complex case.

3 First, the action is provisionally complex because it is putative class action. Cal. Rule of
4 Ct. 3.400(d)(6). As alleged, the case is state-wide and would affect potentially thousands of UC
5 Regents employees across the state of California.

6 Second, the action is likely to involve extensive motion practice raising difficult or novel
7 issues that will be time consuming to resolve. Plaintiff David Lieberman is a professor of law at
8 University of California, Berkeley. He alleges that a provision in the UC Regents' health plan,
9 which is administered by Blue Shield, is unlawful under Insurance Code Section 11580.2. More
10 specifically, he alleges that the UC Regents health plan provides that UC Regents may recover
11 amounts received by an insured employee from uninsured and underinsured coverage. (Compl.
12 ¶ 4.) He alleges that Section 11580.2 prohibits such language. (*Id.* ¶¶ 5-6.) The parties dispute the
13 meaning of Section 11580.2, which was enacted in 1972—specifically, they dispute the meaning
14 of “directly to the benefit of” and whether UC Regents constitutes a “state or political
15 subdivision.” These disputes raise novel legal questions that the Court will be considering and
16 addressing for the first time. Further, both of these legal questions will involve extensive review
17 and analysis of decades-old legislative history.

18 If the action proceeds, it will also likely involve a substantial amount of documentary
19 evidence and a large number of witnesses. The case potentially affects thousands of UC Regents
20 employees. Further, while the UC Regents' plan was administered by Blue Shield, Plaintiff
21 alleges that Blue Shield contracted with a third party for collections. (Compl. ¶ 16.) With respect
22 to Plaintiff alone, he alleges that this third party “sent multiple demands for reimbursement” and
23 communicated with his attorney multiple times. (*Id.*) As a result, there may be thousands of pages
24 of similar documents and communications regarding other putative class members.

25 Finally, the relief that Plaintiff seeks on behalf of the putative class would, if ordered,
26 involve substantial postjudgment judicial supervision. Plaintiff seeks restitution and preliminary
27 and permanent injunctive relief regarding UC Regents' collection efforts going forward. That
28 relief would implicate the actions of UC Regents, Blue Shield, and the third party, Rawlings.

1 **III. CONCLUSION**

2 For these reasons, Blue Shield respectfully requests that the Court approve this
3 Application for Approval of Complex Litigation Designation and issue an order assigning this
4 case to the Complex Litigation Department.

5
6 Dated: May 10, 2018

MANATT, PHELPS & PHILLIPS, LLP

7
8 By: 

9 Joseph E. Laska
10 Attorneys for Defendant
11 BLUE SHIELD OF CALIFORNIA

PROOF OF SERVICE

1 I, Elaine T. Maestro, declare as follows:

2 I am employed in San Francisco County, San Francisco, California. I am over the
 3 age of eighteen years and not a party to this action. My business address is MANATT, PHELPS
 4 & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On
 5 May 15, 2018, I served the within:

**DEFENDANT BLUE SHIELD OF CALIFORNIA'S UNOPPOSED
6 APPLICATION FOR APPROVAL OF COMPLEX DESIGNATION**

7 on the interested parties in this action addressed as follows:

8 Michael Padilla, Esq.
 9 Jeffrey Padilla, Esq.
 O'MARA & PADILLA
 10 320 Encinitas Blvd., Suite A
 Encinitas, CA 92024
 11 Tel: 858.481.5454/Fax: 858.720.9797
Attorneys for Plaintiff

Donald M. De Camara, Esq.
 LAW OFFICES OF DONALD M. DE CAMARA
 1241 Carlsbad Village Drive, Suite E
 Carlsbad, CA 92008
 Tel: 760.730.7404/Fax: 760.730.7409
Attorneys for Plaintiff

13 Thomas D. Haklar, Esq.
 LAW OFFICE OF THOMAS D. HAKLAR
 14 320 Encinitas Blvd., Suite A
 Encinitas, CA 92024
 15 Tel: 858.481.5454/Fax: 858.720.9797
Attorneys for Plaintiff

16 Joshua S. Goodman, Esq.
 Patricia L. Bonheyo, Esq.
 GOODMAN NEUMAN HAMILTON, LLP
 417 Montgomery Street, 10th Floor
 San Francisco, CA 94104
Attorneys for Defendant
 Regents of the University of California



18 (BY MAIL) By placing such document(s) in a sealed envelope, with postage
 19 thereon fully prepaid for first class mail, for collection and mailing at Manatt,
 Phelps & Phillips, LLP, San Francisco, California following ordinary business
 20 practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP
 for collection and processing of correspondence for mailing with the United States
 21 Postal Service, said practice being that in the ordinary course of business,
 correspondence is deposited in the United States Postal Service the same day as it
 is placed for collection.

22 I declare under penalty of perjury under the laws of the State of California that the
 23 foregoing is true and correct and that this declaration was executed on May 15, 2018, at San
 24 Francisco, California.

25
 26
 27
 28



Elaine T. Maestro

SUPERIOR COURT OF CALIFORNIA**COUNTY OF SAN FRANCISCO**

400 MCALLISTER STREET, SAN FRANCISCO, CA 94102-4514

DAVID LIEBERMAN

Department 304

PLAINTIFF (S)

VS.

NO. CGC-18-564930REGENTS OF THE UNIVERSITY OF
CALIFORNIA et al

DEFENDANT (S)

**Order Granting Complex
Designation and for Single
Assignment**

TO: ALL COUNSEL AND PARTIES IN PROPRIA PERSONA

The Application for Approval of Complex Designation filed May-15-2018, in the above-entitled action, is GRANTED. Complex Designation is APPROVED and it is hereby ordered that this entire action be assigned for all purposes to the Complex Litigation Department, Judge CURTIS E.A. KARNOW, Department 304, of the California Superior Court for the County of San Francisco at 400 McAllister Street, San Francisco, CA 94102.

The CASE MANAGEMENT CONFERENCE previously set for Aug-15-2018 in Dept.610 is canceled and a new case management conference is set for Jul-9-2018 at 9:00 am in Department 304. Counsel is expected to appear in person for this initial case management conference. A JOINT case management statement must be filed and an endorsed copy thereof delivered to Department 304 no later than four (4) court days prior to the case management conference.

Any pending motions previously set for hearing in the Law and Motion or Discovery Departments should be taken off calendar and new courtesy copies forwarded to Department 304 for possible re-setting at the time of the case management conference. All court dates must be reserved in advance with the Clerk of the Court. The Clerk of the Court in Department 304 may be contacted at (415) 551-3729.

Counsel for plaintiff shall provide a copy of this order and notice to all counsel of record and/or parties In Propria Persona that are not listed in the attached certificate of service.

All counsel should read and be familiar with the "User's Manual for Dept.304" located online at:
<http://www.sfsuperiorcourt.org/divisions/civil/litigation>

This case is now subject to mandatory e-filing and e-service pursuant to Local Rule 2.10. For e-filing registration, training information and service list assistance, contact the Court's approved e-filing & e-service provider at (888)529-7587.

DATED: MAY-30-2018

Curtis Karnow

JUDGE

I, the undersigned, certify that I am an employee of the Superior Court of California, County of San Francisco and not a party to the above-entitled cause and that on MAY-30-2018 I served the attached Order Granting Complex Designation and for Single Assignment by placing a copy thereof in an envelope addressed to all parties to this action as listed below. I then placed the envelope in the outgoing mail at 400 McAllister Street, San Francisco, CA 94102, on the date indicated above for collection, sealing of the envelope, attachment of required prepaid postage, and mailing on that date, following standard court practice.

Dated : MAY-30-2018

By: DANIAL LEMIRE

MICHAEL D. PADILLA (067060)
O'MARA & PADILLA
320 ENCINITAS BLVD SUITE A
ENCINITAS, CA 92024

DONALD M. DE CAMARA (069703)
LAW OFFICES OF DONALD M DE CAMARA
1241 CARLSBAD VILLAGE DR.
SUITE E
CARLSBAD, CA 92008

JOSHUA SETH GOODMAN (116576)
GOODMAN NEUMAN HAMILTON LLP
417 MONTGOMERY STREET,
10TH FLOOR
SAN FRANCISCO, CA 94104

GREGORY N PIMSTONE (150203)
MANATT, PHELPS & PHILLIPS, LLP
11355 WEST OLYMPIC BLVD.
LOS ANGELES, CA 90064

THOMAS D. HAKLAR (169039)
LAW OFFICES OF THOMAS D. HAKLAR
320 ENCINITAS BLVD STE A
ENCINITAS, CA 92024

JOSEPH EDWARD LASKA (221055)
MANATT, PHELPS & PHILLIPS, LLP
1 EMBARCADERO CENTER FL 30
SAN FRANCISCO, CA 94111-3719

EXHIBIT D

1 MICHAEL PADILLA, Esq., SBN 67060
 2 JEFFREY PADILLA, Esq., 239693
 3 O'MARA & PADILLA
 4 320 Encinitas Blvd., Suite A
 5 Encinitas, CA 92024
 6 Tel: 858-481-5454/Fax: 858-720-9797

7 DONALD M. DE CAMARA, Esq., SBN 69703
 8 LAW OFFICES OF DONALD M. DE CAMARA
 9 1241 Carlsbad Village Drive, Suite E
 10 Carlsbad, CA 92008
 11 Tel: 760-730-7404/Fax: 760-730-7409

12 THOMAS D. HAKLAR, Esq., SBN 169039
 13 LAW OFFICE OF THOMAS D. HAKLAR
 14 320 Encinitas Blvd., Suite A
 15 Encinitas, CA 92024
 16 Tel: 858-481-5454/Fax: 858-720-9797

ELECTRONICALLY
FILED
*Superior Court of California,
 County of San Francisco*
05/04/2018
Clerk of the Court
 BY: DAVID YUEN
 Deputy Clerk

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **IN AND FOR THE COUNTY OF SAN FRANCISCO – CIVIL CENTER COURTHOUSE**

19 DAVID LIEBERMAN, INDIVIDUALLY AND
 20 ON BEHALF OF ALL OTHERS SIMILARLY
 21 SITUATED,

22 Plaintiffs,
 23
 24 vs.

25 REGENTS OF THE UNIVERSITY OF
 26 CALIFORNIA; BLUE SHIELD OF
 27 CALIFORNIA, AND DOES 1 TO 50,
 28 INCLUSIVE

Defendants.

Case No. CGC-18-564930

Action Filed: March 12, 2018

Judge: Hon. Teri L. Jackson

Dept: 610

**FIRST AMENDED CLASS ACTION
 COMPLAINT**

VERIFIED COMPLAINT FOR:

1. Declaratory Relief

**2. Preliminary and Permanent
 Injunctive Relief**

3. Unjust Enrichment/Restitution

**4. Violation of Business and
 Professions Code §17200, et seq.
 (Unlawful and Unfair)**

1 Plaintiff DAVID LIEBERMAN by and through his undersigned counsel, alleges,
2 based on personal knowledge as to himself and his own acts and, as to other matters,
3 based on information and belief, as follows:

4

5 **INTRODUCTION**

6 1. At all times mentioned, plaintiff David Lieberman has been employed by the
7 defendant Regents of the University of California (hereinafter "REGENTS") as a
8 professor at UC Berkeley Law School. Employees of the REGENTS are entitled to
9 health care coverage as a group benefit of their employment. This coverage is a self-
10 funded plan paid through monthly contributions by employees and the Regents and
11 plaintiff was enrolled in this health plan in 2016. Defendant REGENTS is a public trust
12 operated as a public corporation of the State of California and is considered to be a
13 Branch of the State, a State governmental agency and a public entity. As such, the
14 REGENTS group health plan is not subject to ERISA.
15

16 2. On May 2, 2016, plaintiff was involved in a serious motor vehicle accident
17 and suffered severe injuries, requiring hospitalization and extensive treatment. At the
18 time of the accident, plaintiff was covered under the REGENTS health plan, and said
19 health plan paid for plaintiff's medical expenses in excess of \$500,000.
20

21 3. At the time of the above accident, the tortfeasor who caused the accident
22 injuring plaintiff had only \$15,000 of liability coverage. However, plaintiff had \$500,000
23 of uninsured and underinsured ("UM/UIM") coverage which provides for an additional
24 \$485,000 of coverage to plaintiff. Consequently, plaintiff had available to him \$485,000
25 of UIM available to him as primary and/or excess coverage for his injuries incurred in
26 this accident. This UIM coverage was purchased by plaintiff for the purpose of
27
28

1 protecting his family and himself from any perils caused by uninsured or underinsured
2 drivers.

3 4. The REGENTS group health plan at the time of plaintiff's accident provided
4 for reimbursement rights purporting to allow REGENTS to recover medical expenses its
5 health plan had paid from any "Recovery" made by an injured employee. "Recovery" is
6 defined in the plan to include any amount received from the employee's UM/UIM
7 coverage. The REGENTS health plan's reimbursement provision appears at pages 42-
8 43 of the plan's Benefit Booklet, which pages are attached hereto as Exhibit 1. Said
9 provision purports to create a lien or security interest in the "full amount of Benefits paid
10 by the plan" and also purports to waive all equitable defenses to reimbursement such as
11 the "make whole" doctrine and the "common fund" doctrine.

12 5. In 1972, the California State Legislature modified the UM/UIM statute,
13 Insurance Code §11580.2 and included a new subsection under §11580.2(c)(4),
14 providing that, "The insurance coverage provided for in this section does not apply
15 either as primary or as excess coverage" (4) "In any instance where it would inure
16 directly or indirectly to the benefit of any workers' compensation carrier or to any or to
17 any person qualified as a self-insurer under any workers' compensation law, **or directly**
18 **to the benefit of the United States, or any state or any political subdivision**
19 **thereof.**" (emphasis supplied)

20 6. DEFENDANTS have willfully violated this law by claiming a lien and security
21 interest against the entire amount of plaintiff's UIM coverage, intended as his primary
22 and/or excess coverage for his own protection. DEFENDANTS have thereby claimed
23 and seized the right to the entirety of plaintiff's UIM coverage for its own direct benefit in

1 violation of §11580.2(c)(4). Because the REGENTS plan is self-funded, said defendant
2 owns any such reimbursement rights and can use such recoveries for any purpose
3 without any limitations or oversight. Said claim of lien and security interest by an
4 agency of the State is therefore prohibited by the above Insurance Code section.
5

6 7. The State of California enacted the UM/UIM requirement in Insurance Code
7 §11580.2 for the express protection of insured motorists and their families being injured
8 by uninsured or underinsured motorists. The UM/UIM requirement was not intended to
9 benefit the State, the United States, counties, employers, hospitals or health care plans.
10 There is ample State legislation limiting such entities from claiming UM/UIM benefits,
11 such as: Insurance Code §11580.2(c)(4), Insurance Code §§10270.98 and 106 (group
12 health plans cannot reduce benefits based on individual coverage), Government Code
13 §§22946-22947 (reimbursement claims limited to claims against third parties—defined
14 as tortfeasors. (It is unknown at this early stage whether defendant REGENTS opted
15 into PEMHCA pursuant to Government Code §22755)), Hospital Lien Act, Civil Code
16 §§3045.1-3045.6 (hospital liens not available against UM/UIM recoveries), Government
17 Code §23004.1 (county liens enforceable only against judgments and not settlements).
18 Consequently, DEFENDANTS' direct lien claim against the entirety of plaintiff's UIM
19 coverage violates the clear legislative intent of the State to protect UM/UIM claims from
20 such direct claims.
21

22 8. This is a Class Action pursuant to Code of Civil Procedure 382 by Plaintiff on
23 behalf of himself and other individuals employed by defendant REGENTS who were
24 subjected to claims by the DEFENDANTS for reimbursement of proceeds under
25 employees' UM/UIM coverage.
26
27

FIRST AMENDED CLASS ACTION COMPLAINT

9. DEFENDANTS' seizure of plaintiff's right to his individual UIM coverage benefits through the unilateral assertion of a lien claim in its plan document constitutes a seizure of private property by the State without any due process of law. There is no provision in DEFENDANTS' plan for any hearing or other judicial oversight before such seizure is effected through assertion of the lien claim. DEFENDANTS' reimbursement provision (Exhibit 1) also purports to provide that there is a "waiver of any defense to full reimbursement of the Plan from the recovery." Said seizure also constitutes a violation of equal protection of the laws of the State in that similarly situated persons are treated substantially differently depending on which State laws apply, as noted above.

10. Plaintiff seeks, on behalf of himself and the Class, a declaration that defendants' practice of claiming UM/UIM benefits from its employees is unlawful and seeks a permanent injunction enjoining DEFENDANTS from continuing their unlawful practice of willfully violating the Insurance Code provisions intended to safeguard Plaintiffs' UM/UIM coverage, restitution, and costs and attorneys' fees.

PARTIES

11. Plaintiff DAVID LIEBERMAN is a citizen of California and resides in Berkeley, California. He is employed by Defendant REGENTS as a professor at UC Berkeley Law School.

12. At all times relevant herein, Defendant REGENTS was a public trust operated as a public corporation of the State of California and is considered to be a Branch of the State, a State governmental agency and a public entity, that operates in San Francisco and throughout the State of California.

1 13. Defendant BLUE SHIELD of CALIFORNIA ("BLUE SHIELD") is a
2 corporation duly organized and existing under the laws of the State of California, with its
3 principal place of business located in San Francisco, California. It is licensed to conduct
4 business as a healthcare service plan, health/disability insurer and is in the business of
5 providing health plans to consumers throughout this State. BLUE SHIELD contracts
6 with Regents to provide claims administration and provider network services to
7 defendant REGENTS' health plan for its employees. Plaintiff is informed and believes
8 and thereon alleges that, pursuant to that contract, BLUE SHIELD administers claims,
9 provides network, subrogation and reimbursement services and exercises discretion in
10 performing all such duties.

13 14. The true names and capacities, whether individual, corporate, associate or
14 otherwise, of DEFENDANTS sued herein as DOES 1 through 50 are currently unknown
15 to Plaintiffs who, therefore, sue these defendants by such fictitious names under Code
16 or Civil Procedure §474. Plaintiffs allege, upon information and belief, that each of the
17 DOE defendants is legally responsible in some manner for the unlawful acts referred to
18 herein. Plaintiff will seek leave of court to amend this complaint to reflect the true
19 names and capacities of the DEFENDANT designated hereinafter as DOES when such
20 identities become known

23 15. Plaintiff is informed and believes and, based thereon, alleges each
24 Defendant acted in all respects pertinent to this action as the agent of the other
25 DEFENDANTS, carried out a joint scheme, business plan or policy in all respects
26 pertinent hereto, and the acts of each DEFENDANT are legally attributable to the other
27 DEFENDANTS.

FACTUAL BACKGROUND

16. Plaintiff is informed and believes and thereon alleges that as of the date of this complaint, DEFENDANTS have made reimbursement demands from Plaintiffs' UM/UIM coverage throughout the State of California.

17. Defendant BLUE SHIELD contracts with a Kentucky collection agency, Rawlings and Company, to pursue subrogation and reimbursement from employees of defendant REGENTS from said employees' personal injury claims, including claims from employees' own UM/UIM recoveries.

18. Acting as agent for the DEFENDANT and each of them, Rawlings has sent multiple demands for reimbursement from any recovery that plaintiff Lieberman should make from his own UM/UIM coverage. Plaintiff Lieberman's personal injury attorney advised Rawlings in writing that any such claim was unlawful under the above Insurance Code, that he was aware that REGENTS was doing the same thing to other employees and that Plaintiff was firm in his position that the practice was unlawful. In response, Rawlings attorney, acting as agent for the DEFENDANTS herein, responded with a letter dated October 16, 2017, rejecting plaintiff's position and insisting on a right to plaintiff's UM/UIM coverage under Insurance Code §11580.2. Since that date, Rawlings has continued to pursue reimbursement from plaintiff Lieberman's UM/UIM policy, through multiple e-mails, letters and telephone calls, all in violation of the Insurance Code section cited above.

19. REGENTS' web site indicates that it has in excess of 185,000 employees. Plaintiff is informed and believes and thereon alleges that DEFENDANTS are pursuing this unlawful practice of demanding recovery from their own employees' UM/UIM

1 recoveries throughout the State and it is believed that hundreds or thousands of such
 2 claims have been pursued by defendants within the four years prior to the filing of this
 3 complaint.

4

5 **CLASS ALLEGATIONS**

6 20. Plaintiff brings this class action pursuant to California Code of Civil
 7 Procedure §382. Plaintiff seeks to certify a Class composed of all persons who
 8 obtained requests for reimbursements from their UM/UIM awards from DEFENDANTS,
 9 and fall within Subclass A or B as follows:

10

11

12 **SUBCLASS A**

13 All present and previous employees of REGENTS who are
 14 currently facing DEFENDANTS' claims for reimbursement
 15 from their own UM/UIM claims but have not paid
 16 defendants from said coverage, and REGENTS employees
 17 who face such claims in the future.

18

19

20 **SUBCLASS B**

21

22 All REGENTS employees who have paid reimbursement
 23 Claims to DEFENDANTS or their agents from their
 24 UM/UIM coverage since March 1, 2014.

NUMEROSITY

21. The Class is so numerous that joinder of all individual members in one action would be impracticable. The disposition of the individual claims of the respective class members through this class action will benefit the parties in this Court.

22. Plaintiff is informed and believes, and thereon alleges, that there are, at a minimum, hundreds or thousands of such Class members.

23. The exact size of the Class and the identities of the individual members thereof are ascertainable through DEFENDANTS' records including, but not limited to, Defendants' transactions and through DEFENDANTS' agents acting on their behalf.

TYPICALITY

24. Plaintiff's claims are typical of the Class. The claims of the Plaintiff and the Class are based on the same legal theories and rise from the same unlawful conduct.

25. Plaintiff and the Class members all had their health coverage through their employment with defendant REGENTS, with each receiving demands for reimbursement for UM/UIM recoveries from Defendants. Therefore, DEFENDANTS were in violation of Insurance Code 11580.2(c)(4).

COMMON QUESTIONS OF FACT AND LAW

26. There is a well-defined community of interest and common questions of fact and law affecting members of the Class.

27. The questions of fact and law common to the Class predominate over questions which may affect individual members and include the following:

- a. Whether DEFENDANTS' conduct of seeking and receiving reimbursement from Plaintiff and Class members violated Insurance Code §11580.2(c)(4);
 - b. Whether DEFENDANTS' conduct was willful;
 - c. Whether Plaintiff and Class members are entitled to restitution, costs and/or attorneys' fees for DEFENDANTS' acts and conduct; and
 - d. Whether Plaintiff and Class members are entitled to a permanent injunction enjoining DEFENDANTS from continuing to engage in its unlawful conduct.
- e. Whether the Defendants' plan provision allowing a lien seizure of employees' UIM coverage without the benefit of any hearing or judicial oversight is a violation of due process and equal protection of the law.

ADEQUACY OF REPRESENTATION

28. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class. Plaintiff will fairly, adequately and vigorously represent and protect the interests of Class members and have no interests antagonistic to Class members. Plaintiff has retained counsel who are competent and experienced in the prosecution of class action litigation.

SUPERIORITY

29. A class action is superior to other available means for the fair and efficient adjudication of the Class' claims. The restitution to each Class member is easily ascertainable from DEFENDANTS own records. Plaintiff does not know of any other litigation concerning the controversy already commenced by or against any Class member. The likelihood of the individual Class members prosecuting separate claims is

1 remote. Individualized litigation would also present the potential for varying,
2 inconsistent or contradictory judgment, and would increase the delay and expense to all
3 parties and the court system resulting from multiple trials of the same factual issues. In
4 contrast, the conduct of this matter as a class action presents fewer management
5 difficulties, conserves the resources of the parties and the court system, and would
6 protect the rights of members of the Class. Plaintiff knows of no difficulty to be
7 encountered in the management of this action that would preclude its maintenance as a
8 class action.

10

11 **FIRST CAUSE OF ACTION**

12 **Complaint for Declaratory Relief**

13 **(Against All DEFENDANTS and DOES 1-50)**

14 30. Plaintiff and the Class incorporate by reference each of the preceding
15 paragraphs as though fully set forth herein.

16 31. A Declaratory Judgment is necessary in that Plaintiff contends, and
17 DEFENDANTS deny, the following:

18 The UC REGENTS and BLUE SHIELD's lien claim of reimbursement
19 Rights to Plaintiff's UM/UIM proceeds is an unlawful act
20 under Insurance Code 11580.2(c)(4) and said defendants' reimbursement
21 provision in their health plan purporting to allow defendants to lay claim to
22 employees" UM/UIM coverage is unlawful. (See attached Exhibit 1)

23 32. The DEFENDANTS have willfully violated Insurance Code 11580.2(c)(4) in
24 conscious disregard of the rights of Plaintiff and Class members through demanding
25 and/or obtaining reimbursement of UM/UIM awards in violation of the law.

33. DEFENDANTS' seizure of plaintiff's right to his individual UIM coverage benefits through the unilateral assertion of a lien claim in its plan document constitutes a seizure of private property by the State without any due process of law. There is no provision in DEFENDANTS' plan for any hearing or other judicial oversight before such seizure is effected through assertion of the lien claim. DEFENDANTS' reimbursement provision (Exhibit 1) also purports to provide that there is a "waiver of any defense to full reimbursement of the Plan from the recovery." Said seizure also constitutes a violation of equal protection of the laws of the State in that similarly situated persons are treated substantially differently depending on which State laws apply, as noted above.

SECOND CAUSE OF ACTION

Complaint for Preliminary and Permanent Injunctive Relief

(Against All DEFENDANTS and DOES 1-50)

34. Plaintiff and the Class incorporate by reference each of the preceding paragraphs as though fully set forth herein.

35. An actual controversy has arisen and now exists between the parties relating to the REGENTS' claimed entitlement to reimbursement for medical expenses paid under a group health plan from Plaintiff's policy proceeds.

36. A preliminary and permanent injunction enjoining DEFENDANTS from asserting any right to restitution or reimbursement from uninsured or underinsured motorist insurance coverage under any group health plan issued by defendants is necessary to protect Plaintiffs in said group health plan(s).

37. DEFENDANTS' actions were and continue to be willful. Defendants' conduct is continuing and unless restrained, DEFENDANTS will continue to engage in its unlawful conduct.

38. DEFENDANTS' wrongful conduct, unless and until enjoined and restrained by order of this court, will cause great and irreparable harm to Plaintiff and the Class because the mentioned violation by defendants will continue unabated.

THIRD CAUSE OF ACTION

Unjust Enrichment/Restitution

(Against ALL DEFENDANTS and DOES 1-50)

39. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein.

40. DEFENDANTS have been unjustly enriched as a result of the conduct described in this Complaint and other inequitable conduct.

41. Plaintiff alleges that DEFENDANTS' have pursued an unlawful practice of demanding recovery from their own employees' UM/UIM recoveries in violation of Insurance Code §11580.2(c)(4).

42. DEFENDANTS have been unjustly enriched by their unlawful retention of part of Plaintiffs' UM/UIM recoveries and it would be inequitable and unjust for DEFENDANTS to continue to retain those amounts.

43. Accordingly, Plaintiffs seek a return of all benefits that have been conferred on DEFENDANTS and by which they have been unjustly enriched in an amount to be proven at trial.

FOURTH CAUSE OF ACTION

Violations of Business and Professions Code Section 17200, et seq.

Unlawful and Unfair Business Acts and Practice

(Against Blue Shield and DOES 1-50 ONLY)

44. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth herein.

45. Plaintiff asserts this Cause of Action individually and on behalf of all members of the Class against Defendant BLUE SHIELD and Does 1-50 for unlawful and unfair business practices, as defined by California Business and Professions Code §17200, *et seq.*

46. Plaintiff is informed and believes and thereon alleges that said DEFENDANTS' conduct violates California Business and Professions Code §17200, et seq. The acts and practices of DEFENDANTS constitute a common continuing course of conduct of unfair competition by means of unlawful and unfair business acts or practices within the meaning of §17200.

47. Pursuant to Business and Professions Code section 17203, Plaintiff and members of the Class seek from defendants, and each of them, restitution and disgorgement of all recoveries from REGENTS' employees UM/UIM coverage obtained through the Unlawful and Unfair Business Practices set forth in this Complaint and other ill-gotten gains obtained by DEFENDANTS as a result of DEFENDANTS' conduct in violation of Business and Professions Code section 17200 obtained through the Unlawful and Unfair Business Practices set forth in this Complaint and other ill-gotten

1 gains obtained by DEFENDANTS as a result of DEFENDANTS' conduct in violation of
2 Business and Professions Code section 17200.

3 48. Pursuant to Business and Professions Code section 17204, Plaintiff and
4 members of the Class seek an order of this Court enjoining DEFENDANTS, and each of
5 them, from continuing to engage in the acts set forth in this Complaint, which acts
6 constitute violations of Business and Professions Code section 17200, *et seq.* Plaintiff
7 and the Class will be irreparably harmed if such an order is not granted.

8 49. Said employee benefit plans provided by Defendant BLUE SHIELD contain
9 unlawful provisions purporting to allow BLUE SHIELD to seek reimbursement from
10 Plaintiffs' UM/UIM coverage from the health plans which violate California Business and
11 professions Code section 17200 *et seq* and Insurance Code section 11580.2(c)(4).
12 Said plans also operate as lien seizures by the State of employees' private property
13 without any hearing or judicial oversight and therefore violate due process and equal
14 protection of the law.

15 50. Participants and beneficiaries of said employee benefit plans who have
16 paid any UM/UIM benefits to BLUE SHIELD in the past are entitled to restitution to
17 recover those amounts collected in violation of California insurance law, and to prevent
18 the unjust and illegal enrichment of BLUE SHIELD and/or its agents.

19 51. Participants and beneficiaries of said employee benefits plans who have
20 not paid any UM/UIM benefits to BLUE SHIELD but are subject to present or future
21 claims against their UM/UIM benefits by BLUE SHIELD are entitled to a
22 declaration/clarification of their right to present, or future benefits, without any such
23 claims being asserted against their UM/UIM benefits.

52. Plaintiff also seeks an order awarding attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5.

53. Plaintiff and the Class have suffered substantial injury in the form of actionable losses of money as a direct and proximate result of DEFENDANTS' unlawful and unfair business practices.

PRAYER FOR RELIEF

Plaintiff, on his own behalf and on behalf of the Class, pray for relief as follows, as applicable to the causes of action set forth above:

1. For a Judicial Declaration that ALL DEFENDANTS have violated Insurance Code section 11580.2(c)(4), by demanding and laying claim to UM/UIM proceeds by the Plaintiff and the proposed Class.

2.. For a judicial declaration that the lien seizure of plaintiffs' UIM coverage benefits by a State agency without any hearing or judicial oversight constitutes a denial of due process requiring the provision allowing such seizure to be stricken. For a further declaration that the same provision violates equal protection of the laws to persons similarly situated.

3. For Preliminary and Permanent Injunctive Relief, enjoining ALL DEFENDANTS from continuing to assert any claims for reimbursement from the UM/UIM claims of the REGENTS employees.

4. For an Order certifying the proposed Class pursuant to Code of Civil Procedure section 382 and Civil Code section 1780, *et seq.* against ALL DEFENDANTS and appointing Plaintiff to represent the proposed Class and designating their attorneys as Class Counsel.

1 5. Under Business and Professions Code section 17203, Plaintiff, and the
2 general public, seek an Order of this Court ordering BLUE SHIELD and DOES 1
3 through 50 to immediately cease all acts of unfair competition and to enjoin said
4 DEFENDANTS from continuing to conduct business via unlawful and/or unfair business
5 acts or practices as particularized herein.

6 6. For Class Plaintiffs who have REGENTS health coverage and who have
7 paid reimbursement from their UM/UIM recoveries to DEFENDANTS or their agents, an
8 Order of restitution in the amount of the UM/UIM benefits paid.

9 7. For Class Plaintiffs who have REGENTS health coverage pursuant to the
10 REGENTS employee benefit plan, and who are being subjected to a reimbursement
11 claim by DEFENDANTS from their UM/UIM recoveries, a declaration and clarification of
12 their right to be free of such claims.

13 8. For a preliminary and permanent injunction enjoining ALL DEFENDANTS
14 from asserting any right to restitution or reimbursement from UM/UIM coverage under
15 any disability or group health plan issued by REGENTS.

16 9. For an Order requiring DEFENDANTS, and DOES 1 through 50, to give
17 notice of this action, to participants in a REGENTS health plan, who within four years of
18 the filing of the Complaint, had uninsured or underinsured motorist insurance policy
19 proceeds paid over to DEFENDANTS or their agents.

20 10. For an Order requiring DEFENDANTS and DOES 1 through 50, to identify
21 all health plan members who, within four years of the filing of this Complaint, paid over
22 uninsured and underinsured motorist policy benefits to defendants or their agents.

1 11. For an Order directing REGENTS and BLUE SHIELD to notify all "Class
2 Members" who are presently subject to its collection efforts against said members'
3 UM/UIM coverage of this action and notifying said members of its withdrawal of any and
4 all claims for reimbursement from such coverage.
5

6 12. For an Order awarding Plaintiff and the Class restitution of all uninsured
7 and underinsured policy benefits recovered from REGENTS group health plan
8 participants and such other relief as the Court deems proper.
9

10 13. For an Order declaring the rights and obligations of Plaintiff and Class
11 Members, on the one hand, and BLUE SHIELD, on the other, with regard to the
12 business practices alleged.
13

14 14. For an Order awarding Plaintiffs' attorneys' fees, costs and expenses as
15 authorized by applicable law; and
16

17 15. For such other and further relief as this Court may deem just and proper.
18

19 Dated: May 3, 2018



20 O'MARA & PADILLA

21 By: MICHAEL D. PADILLA
22 Law Offices of Donald M. De Camara
23 Law Offices of Thomas D. Haklar
24 Attorneys for Plaintiff
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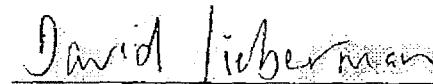
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VERIFICATION OF FIRST AMENDED COMPLAINT

I, David Lieberman, declare as follows:

1. I am the Plaintiff in the above-entitled action. I am a citizen and resident of the State of California.
2. I have personal knowledge of the facts alleged by me in the foregoing First Amended Complaint, and if called upon to testify I could competently testify to those facts, except as to those matters set forth on information and belief, and as to those matters, I am informed and believe them to be true.
3. I declare and verify under penalty of perjury under the laws of the State of California that I have read the foregoing First Amended Complaint and the factual allegations therein are true and correct.

Executed on May 3, 2018


DAVID LIEBERMAN